

**FCC FACT SHEET\***

**Rates for Interstate Inmate Calling Services**

Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking – WC Docket No. 12-375

**Background:** The ability to make telephone calls is essential to allowing incarcerated people to stay connected to their family and loved ones. While unreasonable rates, charges, and practices associated with calling services present barriers to all incarcerated people, the obstacles are much larger for individuals who are deaf, hard of hearing or deafblind, or who have a speech disability. In May 2021, in a *Fifth Further Notice of Proposed Rulemaking*, the Commission sought comment on requiring inmate calling services providers to provide access to all eligible relay services for incarcerated people with communication disabilities, as well as related issues. The Commission also sought comment on issues to help ensure that interstate and international inmate calling services rates, terms, and conditions are just and reasonable. The Commission will consider a Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking that will, if adopted, improve access to communications services for incarcerated people with communication disabilities and reduce the financial burdens created by certain charges and practices.

**What the Fourth Report and Order Would Do:**

- Require all inmate calling services providers to provide access to all relay services eligible for Telecommunications Relay Services (TRS) Fund support, plus American Sign Language direct, or point-to-point, video communication, in any correctional facility located where broadband is available, in a jurisdiction with an average daily population of 50 or more incarcerated persons.
- Clarify and expand the scope of the restrictions on inmate calling services providers' authority to assess charges for TRS calls.
- Expand the scope of inmate calling services providers' annual reporting requirements to include additional accessibility data, including information related to the provision of all forms of TRS.
- Modify TRS user registration requirements to facilitate the use of relay services by eligible incarcerated persons.
- Adopt rules for the treatment of balances in inactive calling services accounts.
- Lower the caps on certain ancillary services charges.
- Amend the Commission's definitions of "Jail" and "Prison."

**What the Sixth Further Notice of Proposed Rulemaking Would Do:**

- Seek comment on further reforms to expand the provision of TRS to incarcerated people with communication disabilities.
- Seek further comment on other reforms, including how best to use the data submitted in response to the Commission's Third Mandatory Data Collection to establish just and reasonable permanent rate caps for interstate and international calling services.

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\* This document is being released as part of a "permit-but-disclose" proceeding. Any presentations or views on the subject expressed to the Commission or to its staff, including by email, must be filed in WC Docket No. 12-375, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>). Before filing, participants should familiarize themselves with the Commission's ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. See 47 CFR § 1.1200 *et seq.*

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
Rates for Interstate Inmate Calling Services ) WC Docket No. 12-375

**FOURTH REPORT AND ORDER AND SIXTH FURTHER  
NOTICE OF PROPOSED RULEMAKING\***

**Adopted:** []

**Released:** []

**Comment Date: (30 days after date of publication in the Federal Register)**

**Reply Comment Date: (60 days after date of publication in the Federal Register)**

By the Commission:

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\* This document has been circulated for tentative consideration by the Commission at its September 2022 open meeting. The issues referenced in this document and the Commission's ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairwoman has determined that, in the interest of promoting the public's ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The FCC's *ex parte* rules apply, and presentations are subject to "permit-but-disclose" *ex parte* rules. *See, e.g.*, 47 CFR §§ 1.1200(a), 1.1206. Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. *See* 47 CFR §§ 1.1200(a), 1.1203.

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## I. INTRODUCTION

1. The ability to make telephone calls is essential to allowing incarcerated people to stay connected to their family and loved ones, clergy, counsel, and other critical support systems. While unreasonable rates, charges, and practices associated with calling services present significant barriers to all incarcerated people, the obstacles are much larger for those who are deaf, hard of hearing, deaf-blind, or who have a speech disability.<sup>1</sup> Because functionally equivalent means of communication with the outside world are often unavailable to incarcerated people with communication disabilities, they are effectively trapped in a prison within a prison.<sup>2</sup> Consistent with our statutory obligations, with this Fourth Report and Order (Order) we take strides to improve access to communications services for incarcerated people with communication disabilities.

2. The Commission has an obligation under section 225 of the Communications Act of 1934, as amended (the Act), to ensure those with communication disabilities receive service that is functionally equivalent to that received by those without such disabilities.<sup>3</sup> This obligation supplements and focuses our obligation under section 201(b) of the Act to ensure all people, including incarcerated people, have access to calling services under just and reasonable rates, terms, and practices.<sup>4</sup> In May 2021, we issued a Third Report and Order that, among other actions, reaffirmed our commitment to

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<sup>1</sup> We refer to this class of people generally as incarcerated people with communication disabilities. *Cf. Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763, 12874-75, para. 226 (2015) (*2015 ICS Order* or *2015 ICS Notice*).

<sup>2</sup> *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, 36 FCC Rcd 9519, 9639, para. 263 (2021) (*2021 ICS Order* or *2021 ICS Notice*).

<sup>3</sup> See 47 U.S.C. § 225.

<sup>4</sup> See *id.* § 201(b).

ensure that incarcerated people with disabilities have access to functionally equivalent telecommunications services. In that Order, we also lowered, on an interim basis, the Commission's caps on the amounts inmate calling services (ICS) providers serving prisons or jails with 1,000 or more incarcerated people may charge for interstate calls and capped, for the first time, the providers' charges for international calls. To enable the Commission to set permanent, cost-based interstate and international rate caps for facilities of all sizes and to, if appropriate, adjust its caps on ancillary services fees, that Order required all calling services providers to submit detailed cost data based on prescribed allocation methodologies. We also issued an accompanying Fifth Further Notice of Proposed Rulemaking proposing to expand access to all eligible relay services for incarcerated people with communication disabilities and seeking comment on a number of other issues, including the methodology to be used in setting permanent interstate and international rate caps, the need for periodic data collections, and additional reforms to our ancillary service charge rules.<sup>5</sup>

3. In today's Order, we adopt several requirements to improve access to communications services for incarcerated people with communication disabilities. We require that inmate calling services providers provide access to all relay services eligible for Telecommunications Relay Services (TRS) Fund support in any correctional facility where broadband is available and where the average daily population incarcerated in that jurisdiction (i.e., in that city, county, state, or the United States) totals 50 or more persons.<sup>6</sup> We also require that where inmate calling services providers are required to provide access to all forms of TRS, they also must allow American Sign Language (ASL) direct, or point-to-point, video communication. We clarify and expand the scope of the restrictions on inmate calling services providers assessing charges for TRS calls, expand the scope of the required Annual Reports to reflect the above changes, and modify TRS user registration requirements to facilitate the use of TRS by eligible incarcerated persons.

4. We also adopt other reforms to lessen the financial burden incarcerated people and their loved ones face when using calling services, as contemplated by the *2021 ICS Notice*. To address allegations of abusive provider practices, we prohibit providers from seizing or otherwise disposing of funds in inactive calling services accounts until at least 180 calendar days of continuous inactivity has passed in such accounts, after which we require providers to refund the balance or dispose of the funds in accordance with applicable state law. We lower our cap on provider charges for individual calls when neither the incarcerated person nor the person being called has an account with the provider, as well as our cap on provider charges for processing credit card, debit card, and other payments to calling services accounts. Finally, we amend the definitions of "Jail" and "Prison" in our rules to conform the wording of those rules with the Commission's intent in adopting them in 2015.

5. We adopt a Sixth Further Notice of Proposed Rulemaking (Further Notice) to build on the actions we take today and to obtain additional stakeholder input required to implement further reforms for incarcerated people with communication disabilities. This Further Notice seeks additional comment on whether to allow enterprise registration for Internet Protocol Captioned Telephone Service (IP CTS)<sup>7</sup>

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<sup>5</sup> *2021 ICS Order*, 36 FCCRcd 9519.

<sup>6</sup> *2015 ICS Order*, 30 FCCRcd at 12875, para. 227. TRS are "telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind or who has a speech disability to engage in communication by wire or radio . . . in a manner that is functionally equivalent to the ability of a hearing person who does not have a speech disability to communicate using voice communication services." 47 U.S.C. § 225(a)(3); 47 CFR § 64.601(a)(42).

<sup>7</sup> IP CTS is a captioned telephone service in which captions are delivered via the Internet to an Internet Protocol-enabled device. 47 CFR § 64.601(a)(22).

in carceral settings and how to address the special circumstances faced by some inmate calling services providers in jurisdictions with average daily populations of fewer than 50 incarcerated persons.

6. Today's Further Notice also seeks additional evidence and comment from stakeholders to enable further reforms concerning providers' rates, charges, and practices in connection with interstate and international inmate calling services. First, we seek comment on refining the rules adopted today concerning the treatment of balances in inactive accounts. Second, we seek comment on expanding the breadth and scope of our existing consumer disclosure requirements. Third, we ask stakeholders to update the record on certain issues in light of the providers' data collection responses. Specifically, we seek comment on how we should use the data to establish just and reasonable permanent caps on interstate and international rates and associated ancillary service charges consistent with the statute. Finally, we invite further comment on allowing inmate calling services providers to offer pilot programs allowing consumers to purchase calling services under alternative pricing structures.

7. Our actions today will bring much-needed relief to incarcerated people with communication disabilities by easing the obstacles these individuals face in communicating with loved ones. At the same time, we expect our other reforms aimed at reducing certain charges and curtailing abusive practices to benefit all incarcerated people by easing the financial burdens that such charges and practices place on the incarcerated and those they call.

## II. BACKGROUND

8. The impact that unjust and unreasonable rates, fees, and practices have on incarcerated people, as well as the Commission's efforts to ameliorate that impact, are well-documented, and need not be repeated here.<sup>8</sup> Instead, we begin with a brief overview of the Commission's past actions concerning communication disabilities in the inmate calling services context, and then review key aspects of the *2021 ICS Order* and the *2021 ICS Notice* from which this item follows.

### A. Communications Disabilities and Calling Services for Incarcerated People

9. The Commission first sought comment in 2012 on access to inmate calling services and TRS for incarcerated people with communication disabilities.<sup>9</sup> In 2013, the Commission clarified that section 225 of the Act and the Commission's implementing regulations prohibit inmate calling services providers from assessing an additional charge for a TRS call, in excess of the charge for an equivalent voice inmate calling services call.<sup>10</sup> In 2015, the Commission went further, amending its rules to prohibit inmate calling services providers from levying or collecting any charge at all for a TRS call placed by an incarcerated individual using a text telephone (TTY) device.<sup>11</sup> The Commission reasoned that, by exempting TRS calls from the fair compensation mandate of section 276 of the Act, Congress indicated an intent that such calls be provided for no charge.<sup>12</sup>

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<sup>8</sup> See, e.g., *2021 ICS Order*, 36 FCC Rcd at 9522-30, 9534-36, paras. 7-27, 34-38; *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 8485, 8486-95, paras. 5-26 (2020) (*2020 ICS Order on Remand* or *2020 ICS Notice*).

<sup>9</sup> See *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Notice of Proposed Rulemaking, 27 FCC Rcd 16629, 16644-45, para. 42 (2012).

<sup>10</sup> *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107, 14159-60, para. 95 (2013).

<sup>11</sup> *2015 ICS Order*, 30 FCC Rcd at 12923, Appx. A at para. 5 (adopting 47 CFR § 64.6040(b)).

<sup>12</sup> *Id.* at 12879, para. 236.

10. In the *2015 ICS Order*, the Commission also affirmed that the general obligation of common carriers to ensure the availability of “mandatory” forms of TRS—TTY-based TRS and speech-to-speech relay service (STS)<sup>13</sup>—applies to inmate calling services providers.<sup>14</sup> However, the Commission did not require those providers to provide access to other relay services—Video Relay Service (VRS),<sup>15</sup> Captioned Telephone Service (CTS),<sup>16</sup> IP CTS, and Internet Protocol Relay Service (IP Relay).<sup>17</sup> The Commission reasoned that, because it had not required that all common carriers provide access to these services, it was not able to require inmate calling services providers to do so.<sup>18</sup> In the *2015 ICS Notice*, the Commission sought additional comment on the implications of video calling and video visitation services for incarcerated individuals who are deaf or hard of hearing.<sup>19</sup> In the *2020 ICS*

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<sup>13</sup> TTY-based TRS allows an individual with a communication disability to communicate by telephone with another party, such as a hearing individual, by using a TTY device to send text to a communications assistant (CA) over a circuit-switched telephone network. To connect a hearing individual as the other party to the call, the CA establishes a separate voice service link with the hearing party and converts the TTY user’s text to speech. The CA listens to the hearing party’s voice response and converts that speech to text for the TTY user. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5142, para. 2 (2000) (*2000 TRS Order*). A TTY is “[a] machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.” 47 CFR § 64.601(a)(43). STS “allows individuals with speech disabilities to communicate with voice telephone users through the use of specially trained CAs who understand the speech patterns of persons with speech disabilities and can repeat the words spoken by that person.” *Id.* § 64.601(a)(40).

<sup>14</sup> *2015 ICS Order*, 30 FCC Rcd at 12875, para. 227. This obligation to ensure the availability of TRS also applies to providers of interconnected Voice over Internet Protocol (VoIP) services. 47 CFR § 64.601(b) (applying all regulations and requirements in the Commission’s TRS rules applicable to common carriers to providers of interconnected VoIP); *IP-Enabled Services et al.*, WC Docket No. 04-36 et al., Report and Order, 22 FCC Rcd 11275 (2007) (*2007 TRS Interconnected VoIP Order*) (extending TRS requirements to interconnected VoIP providers).

<sup>15</sup> VRS is a form of TRS that “allows people with hearing and speech disabilities who use sign language to communicate with voice telephone users through video equipment. The video link allows the CA to view and interpret the party’s signed conversation and relay the conversation back and forth with a voice caller.” 47 CFR § 64.601(a)(50).

<sup>16</sup> CTS is used by persons who can speak but who have difficulty hearing over the telephone. Placing a telephone call from a screen-equipped telephone, the user can simultaneously listen to the other party to the call and read captions of what the other party is saying. *Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Declaratory Ruling, 18 FCC Rcd 16121, 16122, para. 3 (2003) (*2003 TRS Declaratory Ruling*).

<sup>17</sup> IP Relay is a form of TRS that “permits an individual with a hearing or a speech disability to communicate in text using an [I]nternet Protocol-enabled device via the [I]nternet.” 47 CFR § 64.601(a)(23); *see also Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Petition for Clarification of WorldCom, Inc.*, CC Docket No. 98-67, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 7779, 7781-82, paras. 8-9 (2002) (*2002 TRS Declaratory Ruling*) (describing how IP Relay works and the benefits of using this service). For consumers who are deaf-blind, IP Relay service is often the sole or primary means of communicating via telephone. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 31 FCC Rcd 7246, 7250-52, paras. 14, 18-19 (CGB 2016).

<sup>18</sup> *2015 ICS Order*, 30 FCC Rcd at 12876, para. 229.

<sup>19</sup> *Id.* at 12907-08, para. 307.

*Notice*, the Commission sought comment on whether additional forms of TRS should be made available to incarcerated individuals, and what the Commission could do to facilitate such access.<sup>20</sup>

11. In the *2021 ICS Notice*, after reviewing the record of this proceeding, and noting that there is far more demand for “non-mandatory” relay services, such as VRS and IP CTS, than for “mandatory” TTY-based relay service, the Commission found that access to commonly used, widely available relay services, such as VRS and IP CTS, is equally or more important for incarcerated people with communication disabilities than it is for the general population. Therefore, to ensure that such individuals have functionally equivalent access to communications, we proposed to amend our rules to require that inmate calling services providers give access wherever feasible to all relay services eligible for TRS Fund support.<sup>21</sup> We also sought comment on whether changes to our TRS rules would be necessary in conjunction with expanded TRS access for incarcerated people,<sup>22</sup> and we proposed to amend section 64.6040 of our rules to clarify that the prohibition on inmate calling services providers charging for TRS calls applies to all forms of TRS, and that such charges must not be assessed on any party to a TRS call for either the relay service itself or the device used.<sup>23</sup> In addition, we also sought comment on whether to require inmate calling services providers to give access to direct, or point-to-point, video communication for eligible incarcerated individuals wherever they provide access to VRS, and whether to limit the charges that may be assessed for such point-to-point video service.<sup>24</sup> Finally, we sought comment on whether to extend our reporting requirements from just TTY service to all other forms of TRS.<sup>25</sup>

## **B. Additional Calling Services Reforms**

12. *Rate and Ancillary Services Fee Caps.* Beyond the disability context, in the *2021 ICS Order* and *2021 ICS Notice*, we took a number of actions that warrant specific attention here. Structurally, that *Order* applied separate rate caps to prisons, jails having average daily populations of 1,000 or more incarcerated people, and jails with lower average daily populations.<sup>26</sup> Additionally, we established interim interstate and international rate caps for prisons and for jails having average daily populations of 1,000 or more.<sup>27</sup> Those rate caps are interim because flaws in the data submitted in response to the Second Mandatory Data Collection prevented us from setting permanent caps for interstate and international inmate calling services and associated ancillary services that accurately reflect the costs of providing those services.

13. To account for this problem, we directed the Wireline Competition Bureau (WCB) and Office of Economics and Analytics (OEA) to develop an additional data collection—the Third Mandatory Data Collection—to enable us to set permanent rate caps for interstate and international inmate calling services that accurately reflect the providers’ costs of providing those services, and to inform the

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<sup>20</sup> *2020 ICS Notice*, 35 FCC Rcd at 8534, para. 136.

<sup>21</sup> *2021 ICS Notice*, 36 FCC Rcd at 9643-45, paras. 268-70.

<sup>22</sup> *Id.* at 9650-52, paras. 284-87.

<sup>23</sup> *Id.* at 9652-53, paras. 288-93.

<sup>24</sup> *Id.* at 9654-55, paras. 294-99. Direct, or point-to-point, video service enables two or more ASL users to place and receive non-relay video calls without the assistance of a CA. See 47 CFR § 64.601(a)(32).

<sup>25</sup> See generally *2021 ICS Notice*, 36 FCC Rcd at 9654-56, paras. 294-301.

<sup>26</sup> See *id.* at 9538-40, paras. 46-48.

<sup>27</sup> See *id.* at 9553-61, 9706-07, 9713, paras. 81-99, Appx. E at paras. 3-4, 19-20.

evaluation and potential revision of our caps on ancillary service charges.<sup>28</sup> After seeking public comment,<sup>29</sup> WCB and OEA issued an Order requiring each inmate calling services provider to submit, among other information, detailed information regarding its inmate calling services operations, costs, revenues, site commission payments, security services, and ancillary services costs and practices.<sup>30</sup> The providers' data collection responses were due June 30, 2022.<sup>31</sup> We have received responses from 14 providers, and WCB and OEA are analyzing those responses.

14. Looking forward, the *2021 ICS Notice* sought comment on the methodology the Commission should use to adopt permanent per-minute rate caps for interstate and international inmate calling services,<sup>32</sup> including seeking comment on certain aspects of reported costs, such as on site commission costs and other site commission reforms for facilities of all sizes,<sup>33</sup> and on the costs of providing calling services to jails with average daily populations of fewer than 1,000 incarcerated people.<sup>34</sup>

15. *Ancillary Services Fee Caps and Practices.* Building on the ancillary services charge rules that the Commission had adopted in 2015,<sup>35</sup> in 2021 we capped, on an interim basis, the third-party

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<sup>28</sup> *Id.* at 9619-20, para. 221 (directing WCB and OEA to determine and describe the information necessary to be collected).

<sup>29</sup> *Wireline Competition Bureau and Office of Economics and Analytics Seek Comment on Upcoming Third Mandatory Data Collection for Inmate Calling Services*, WC Docket No. 12-375, Public Notice, DA 21-1192 (WCB/OEA Sept. 22, 2021).

<sup>30</sup> *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order, DA 22-52 (WCB/OEA Jan. 18, 2022) (*Third Mandatory Data Collection Order*).

<sup>31</sup> *Wireline Competition Bureau Announces the Due Date for Responses to the Commission's Inmate Calling Services Third Mandatory Data Collection*, WC Docket No. 12-375, Public Notice, DA 22-214 (WCB Mar. 2, 2022).

<sup>32</sup> *2021 ICS Notice*, 36 FCC Rcd at 9656-57, 9672-73, paras. 302-05, 338-41 (seeking comment on the methodology that should be used to set permanent rate caps for interstate and international inmate calling services, as well as seeking comment on proposed methodologies to address the potential for double counting of providers' costs for international calls).

<sup>33</sup> *Id.* at 9659-61, paras. 311-15 (seeking comment on whether some or all of providers' site commission payments are costs of providing inmate calling services and what methodology the Commission should use to account for these costs).

<sup>34</sup> *Id.* at 9661-64, paras. 316-21 (seeking comment on the claim that jails with average daily populations of less than 1,000 have higher costs per incarcerated person than larger jails and prisons have, and seeking comment on the reasons for any such discrepancy).

<sup>35</sup> *2015 ICS Order*, 30 FCC Rcd at 12838-39, paras. 144-45. The rules adopted in 2015 limited permissible ancillary services charges to only five types and capped the charges for each: (1) Fees for Single Call and Related Services—billing arrangements whereby an incarcerated person's collect calls are billed through a third party on a per-call basis, where the called party does not have an account with the inmate calling services provider or does not want to establish an account; (2) Automated Payment Fees—credit card payment, debit card payment, and bill processing fees, including fees for payments made by interactive voice response, web, or kiosk; (3) Third-Party Financial Transaction Fees—the exact fees, with no markup, that providers of calling services used by incarcerated people are charged by third parties to transfer money or process financial transactions to facilitate a consumer's ability to make account payments via a third party; (4) Live Agent Fees—fees associated with the optional use of a live operator to complete inmate calling services transactions; and (5) Paper Bill/Statement Fees—fees associated with providing customers of inmate calling services an optional paper billing statement. 47 CFR §§ 64.6000(a), 64.6020; *see 2021 ICS Order*, 36 FCC Rcd at 9524, para. 14 & n.21.



fees inmate calling services providers may pass through to consumers for single-call services and third-party financial transactions at \$6.95 per transaction.<sup>36</sup> We also sought comment on the relationship between these two ancillary services,<sup>37</sup> and on reducing the caps for single-call services fees and third-party financial transactions fees for automated transactions to \$3.00 and the cap for live agent fees to \$5.95.<sup>38</sup>

16. *Consumer Disclosures.* As part of our 2021 ICS Order, we adopted three new consumer disclosure requirements to promote transparency regarding the total rates charged consumers of inmate calling services.<sup>39</sup> First, we required providers to “clearly, accurately, and conspicuously disclose” any separate charge (i.e., any “rate component”) for terminating international calls to each country where they terminate international calls “on their websites or in another reasonable manner readily available to consumers.”<sup>40</sup> Second, we required providers to “clearly label” any site commission fees they charged consumers as “separate line item[s] on [c]onsumer bills” and set standards for determining when the fees would be considered “clearly label[ed].”<sup>41</sup> Finally, we required providers to “clearly label” all charges for international calls, as “separate line item[s] on [c]onsumer bills.”<sup>42</sup>

17. *Other Relevant Topics.* In the 2021 ICS Notice, we invited comment regarding several additional issues on which we take action today. We expressed concern about providers’ practices regarding unused funds in inactive accounts and invited comment on whether we should require refunds after a certain period of inactivity.<sup>43</sup> We proposed to amend the definitions of “Jail” and “Prison” in our rules by, among other actions, explicitly including facilities of the U.S. Immigration and Customs Enforcement (ICE) and the Federal Bureau of Prisons (BOP), whether operated by the law enforcement agency or pursuant to a contract, in our definition of “Jail,” and by adding the terms “juvenile detention facilities” and “secure mental health facilities” to that definition.<sup>44</sup> We also highlighted record evidence that “some providers of inmate calling services may have been imposing ‘duplicate transaction costs’ on the same payments,” such as charging both an automated payment fee when a consumer makes an automated payment to fund its account, as well as charging a third-party financial transaction fee to cover credit/debit card processing costs on the same transaction.<sup>45</sup> We similarly sought comment on “whether the credit card processing fees encompassed in the automated payment fee are the same credit card processing fees referred to in the third-party financial transaction fee.”<sup>46</sup>

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<sup>36</sup> 2021 ICS Order, 36 FCC Rcd at 9612-16, paras. 209-16.

<sup>37</sup> *Id.* at 9667-69, paras. 327-29 (seeking comment on various aspects of the relationship between these third-party fees and fixed ancillary service charges for the same payment methods).

<sup>38</sup> *Id.* at 9613-14, 9670, paras. 210, 332.

<sup>39</sup> *See id.* at 9684, Appx. A at para. 4 (adopting 47 CFR § 64.6110(b)-(c)).

<sup>40</sup> 47 CFR § 64.6110(a); *see* 2021 ICS Order, 36 FCC Rcd at 9599, para. 183.

<sup>41</sup> 47 CFR § 64.6110(b); *see* 2021 ICS Order, 36 FCC Rcd at 9564, para. 104.

<sup>42</sup> 47 CFR § 64.6110(c).

<sup>43</sup> 2021 ICS Notice, 36 FCC Rcd at 9671, para. 337.

<sup>44</sup> *Id.* at 9674-75, 9686, paras. 347-38, Appx. B at para. 2 (proposed amendment to § 64.6000(m)(3)).

<sup>45</sup> *Id.* at 9667, para. 327. The Commission sought comment on whether providers engaged in such “double dipping” as had been alleged in the record, and whether the Commission’s rules clearly prohibit assessing multiple ancillary service charges per transaction or should be amended to implement such a prohibition. *Id.* at 9667-69, paras. 327-29.

<sup>46</sup> *Id.* at 9667, para. 327.

18. Finally, we sought comment in the 2021 *ICS Notice* on whether alternative pricing structures (i.e., those that are independent of per-minute usage pricing) would benefit incarcerated people and their families.<sup>47</sup> We asked commenters to address the relative merits of different pricing structures, “such as one under which an incarcerated person would have a specified—or unlimited—number of monthly minutes of use for a predetermined monthly charge.”<sup>48</sup> We also asked whether we should allow providers to offer different optional pricing structures “as long as one of their options would ensure that all consumers of inmate calling services have the ability to choose a plan subject to the Commission’s prescribed rate caps.”<sup>49</sup> Relatedly, in response to a proposal from Securus, we sought comment on whether the Commission should adopt a process for waiving the per-minute rate requirement to allow for the development of alternative pricing structures.<sup>50</sup>

### III. FOURTH REPORT AND ORDER

#### A. Disability Access – Requirements for Calling Services Providers

##### 1. Making Additional Forms of TRS Available to Incarcerated People

19. We amend our rules to require that inmate calling services providers must provide incarcerated, TRS-eligible users the ability to access any relay service eligible for TRS Fund support. The record amply demonstrates that, in the incarceration setting just as in other environments, access to traditional, TTY-based TRS alone is insufficient to ensure the availability of functionally equivalent communication.<sup>51</sup> Access to more technologically advanced forms of TRS—VRS, IP Relay, and IP CTS or CTS—is necessary to ensure that incarcerated people with hearing or speech disabilities have access to services that are functionally equivalent to the telephone service available to incarcerated people without such disabilities.<sup>52</sup> These four forms of TRS are widely available to, and relied upon by, persons with disabilities nationwide.<sup>53</sup> VRS enables individuals who are deaf and use ASL to communicate in their primary language. CTS and IP CTS enable individuals who are hard of hearing and can speak to communicate by telephone with minimal disruption to the natural flow of conversation.<sup>54</sup> IP Relay offers a text-based relay service that is faster than TTY-based TRS and more immune to the technical problems

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<sup>47</sup> *Id.* at 9657, para. 305.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *E.g.*, Accessibility Coalition Comments at 7-12; NDRN Comments at 4-10; NCIC Reply Comments at 3 (noting that “older disability access technologies such as TTY are difficult to use in the correctional setting” and that “most parties agree that these older technologies will soon be obsolete, except in small, short-term facilities”); *see also* Securus Comments at 3 (“Securus supports the Commission’s efforts to expand advanced forms of TRS for incarcerated persons. It should be both a moral and a legal obligation to provide functionally equivalent access, wherever feasible, to communications services for incarcerated persons with disabilities.”).

<sup>52</sup> *See, e.g.*, Accessibility Coalition Comments at 12-14; 47 U.S.C. § 225(a)(3) (defining TRS as functionally equivalent to voice service); *id.* § 225(b)(1) (requiring the Commission to ensure that TRS is available to all eligible individuals to the extent possible).

<sup>53</sup> 2021 *ICS Notice*, 36 FCC Rcd at 9643-45, paras. 269-70.

<sup>54</sup> *Id.* at 9640-41, para. 265. Although not a “mandatory” relay service, CTS is offered through every state TRS program. In areas where broadband service is unavailable, CTS allows individuals who are hard of hearing but are able to speak to receive captions of what is said in telephone conversations.

affecting TTY use on IP networks.<sup>55</sup> Collectively, these four forms of TRS, along with TTY-based TRS and STS, are essential for ensuring that all segments of the TRS-eligible population have access to functionally equivalent communication.

20. We revisit our interpretation in the *2015 ICS Order* of the Commission’s authority to mandate the provision of VRS, CTS, IP CTS, and IP Relay by inmate calling services providers.<sup>56</sup> We now change course and reject that interpretation to the extent it could be read to indicate that the Commission lacks authority to mandate the provision of these services in carceral settings. The absence of a general mandate in our rules for the provision of VRS, CTS, IP CTS, and IP Relay by carriers and interconnected Voice over Internet Protocol (VoIP) service providers does not preclude us from adopting a rule requiring that inmate calling services providers provide access to these relay services in the special context of carceral settings.<sup>57</sup> TRS Fund support for these services has been sufficient to ensure their wide availability to the general public, rendering such a general mandate unnecessary. However, we now find that the incentives resulting in providers’ near-universal provision of these services to the general public are not present in the special context of inmate calling.

21. As explained in the *2021 Notice*, VRS, CTS, IP CTS, and IP Relay are “non-mandatory” only in the limited sense that carriers and VoIP service providers do not have an obligation to provide these services themselves, and that Commission-certified state TRS programs are not required to include these services.<sup>58</sup> To ensure their availability to the general public, the Commission requires that all telecommunications carriers and VoIP service providers support the provision of VRS, IP Relay, IP CTS, and CTS through *mandatory* contributions to the TRS Fund.<sup>59</sup> As a consequence, VRS, IP Relay, and IP CTS are available to every broadband user at no additional cost. Indeed, people who are deaf or hard of hearing or those with speech disabilities use VRS and IP CTS far more often than they use the “mandatory” forms of TRS.<sup>60</sup> In addition, CTS, even though not “mandatory,” is currently included in every state TRS program and is thereby available to every telephone service subscriber. And while the near-universal availability of such relay services outside the walls of correctional facilities may make it unnecessary to formally mandate their availability to the general population, the uneven record of access to such services in correctional facilities establishes that a mandate *is* needed to ensure their availability to people who are incarcerated.<sup>61</sup> Although we recognize that the provision of any communication service

<sup>55</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Petition for Rulemaking of Sprint Corporation.*, CG Docket No. 03-123, RM-11820, Report and Order, FCC 22-48 (June 30, 2022).

<sup>56</sup> *2015 ICS Order*, 30 FCC Rcd at 12876, para. 229.

<sup>57</sup> ZP Comments at 16-17 (explaining that “nothing in the statute prevents the FCC from promulgating regulations concerning VRS and other more advanced forms of TRS that are specific to inmate calling services providers”).

<sup>58</sup> *2021 ICS Notice*, 36 FCC Rcd at 9644, para. 270 n.858; see generally 47 U.S.C. § 225(c) (requiring each common carrier to “provide in compliance with the regulations prescribed under this section, throughout the area in which it offers service, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers”); 47 CFR § 64.603 (requiring common carriers to provide TRS, including STS, either directly or through a state TRS program); *id.* § 64.601(b) (providing that TRS regulations applicable to common carriers are also applicable to providers of interconnected VoIP service).

<sup>59</sup> See 47 CFR § 64.604(c)(iii)(A)-(B).

<sup>60</sup> See *2021 ICS Notice*, 36 FCC Rcd at 9644, para. 270.

<sup>61</sup> See ZP Comments at 17 (“[A]t a time when no mandate for ICS providers to facilitate access to VRS exists, large numbers of incarcerated people who are deaf or hard of hearing currently do not have any access to VRS whatsoever.”); Letter from Cheryl A. Leanza, Policy Advisor, United Church of Christ, Office of Communication Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 2-3 (filed May 14, 2021) (United Church

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to incarcerated people requires the consent of the relevant correctional authority, we require inmate calling services providers to ensure that these services are made available to incarcerated people in all facilities within the scope of the rule,<sup>62</sup> absent the withholding of such consent by a correctional authority.

22. Further, in requiring inmate calling services providers to provide access to all TRS Fund-supported relay services, we also help ensure the availability of relay services that enable federal, state, and local correctional authorities to carry out their parallel obligations under federal law. Under Title II of the Americans with Disabilities Act (ADA), state and local correctional authorities, as well as other government agencies, must provide nondiscriminatory access to their services, programs, and activities, including telephone service.<sup>63</sup> Federal correctional authorities are subject to similar obligations.<sup>64</sup> Further, U.S. Department of Justice regulations implementing Title II of the ADA provide that state agencies, including correctional authorities, must “furnish appropriate auxiliary aids and services where necessary to afford [incarcerated individuals with disabilities] an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity,”<sup>65</sup> and such “auxiliary aids and services” are defined to include, among other things, “[q]ualified interpreters on-site or through video remote interpreting (VRI) services,” and “voice, text, and video-based telecommunications products and systems, including [TTYs], videophones, and captioned telephones, or equally effective telecommunications devices.”<sup>66</sup> The Justice Department has entered numerous settlement agreements to enforce these requirements in the incarceration context, and in recent years many of these agreements specifically provide for access to advanced communications products such as captioned telephones and videophones, as well as services such as VRS.<sup>67</sup>

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May 14, 2021 *Ex Parte*) (describing circumstances in which accessible communication is not available to incarcerated individuals with disabilities); Accessibility Coalition Comments at 6-7 (noting that “[f]ew carceral facilities currently offer reliable VRS, IP Relay, IP CTS, and CTS to incarcerated people with disabilities” and that “[t]he limited available information indicates access to communication services for incarcerated people with disabilities is often non-existent or nearly so”).

<sup>62</sup> See *infra* paras. 27-28 (exempting certain facilities from an ICS provider’s obligation to provide access to all forms of TRS).

<sup>63</sup> Title II of the Americans with Disabilities Act, Pub. L. 101–336, title II, § 202, July 26, 1990, 104 Stat. 337, codified at 42 U.S.C. § 12131 *et seq.*, provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

<sup>64</sup> See 29 U.S.C. § 794 (“No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.”).

<sup>65</sup> 28 CFR § 35.160(b)(1); see also *id.* § 35.160(b) (containing almost identical language applicable to federal correctional authorities and other federal agencies).

<sup>66</sup> *Id.* § 35.104.

<sup>67</sup> See, e.g., Department of Justice, Settlement Agreement Between the United States of America and Vermont Department of Corrections Under the Americans with Disabilities Act, DJ # 204-78-44, at 9, para. 46 (Oct. 28, 2021), [https://www.ada.gov/vdoc\\_sa.pdf](https://www.ada.gov/vdoc_sa.pdf); Settlement Agreement between the United States of America and the City of Philadelphia and the Philadelphia Police Department, DJ # 204-62-226, para. 9 (Aug. 2, 2018), [https://www.ada.gov/ppd\\_sa.html#\\_ftn5](https://www.ada.gov/ppd_sa.html#_ftn5) (requiring the provision of “working TTYs, captioned telephones and videophones to enable people who are deaf, hard of hearing, or who have speech impairments to make telephone calls as often and with the same availability as individuals who do not use TTYs or videophones”); Settlement Agreement between the United States of America and the Utah Department of Corrections under the Americans

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23. Some commenters suggest that responsibility for making TRS available should lie exclusively with correctional authorities and certified TRS providers.<sup>68</sup> As noted above, we do not require inmate calling services providers to provide access to any form of TRS for which the correctional authority withholds consent.<sup>69</sup> However, the record shows that active inmate calling services involvement can be critical to ensuring that advanced forms of TRS actually *are* made available in a facility.<sup>70</sup> We conclude that the imposition of this service obligation on inmate calling services providers is necessary to ensure that relay services are available in the incarceration setting “to the extent possible and in the most efficient manner.”<sup>71</sup>

24. The record also shows that, due to recent changes in correctional visitation practices, it is now feasible for inmate calling services providers to make VRS and other advanced forms of TRS available, without undue cost or security risk, in any correctional facility with a substantial population.<sup>72</sup>

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with Disabilities Act, DJ # 204-77-80, para. 21 (Jan. 28, 2019), [https://www.ada.gov/udoc\\_sa.html](https://www.ada.gov/udoc_sa.html) (stating that the Department of Corrections “will provide access to Telecommunications Relay Service, Utah Relay Service, or Video Relay Service as needed to connect persons with hearing disabilities with others”). The Utah agreement adds that the Department of Corrections “will also provide a videophone at a location accessible to inmates who are deaf,” and that “[i]nmates who are deaf or hard of hearing shall be afforded access to these devices in a manner equivalent to the access afforded to inmates who use a standard telephone.” *Id.*; Settlement Agreement Between the United States of America and Elizabeth F. Arthur, in Her Official Capacity as the Arlington County Sheriff, DJ # 204-79-325, para. 41, [https://www.ada.gov/arlington\\_co\\_sheriff\\_sa.html](https://www.ada.gov/arlington_co_sheriff_sa.html) (Nov. 17, 2016); Settlement Agreement Between the United States of America and Central Virginia Regional Jail Authority, DJ # 204-80-101, para. 37 (Mar. 12, 2019), [https://www.ada.gov/central\\_va\\_jail\\_sa.html](https://www.ada.gov/central_va_jail_sa.html); Settlement Agreement Between the United States of America and Justin Smith, Sheriff of Larimer County, CO, DJ # 204-13-318, para. 41 (May 23, 2017), [https://www.ada.gov/larimer\\_cty\\_sheriff\\_sa.html](https://www.ada.gov/larimer_cty_sheriff_sa.html).

<sup>68</sup> See, e.g., Global Tel\*Link Comments at 5 (GTL Comments) (stating that “GTL does not provide communications services to people with disabilities in any correctional facility,” and that “[a]ny new mandates regarding the provision of [TRS] and other related services must be applied to the entities that offer such services in the correctional environment”); Pay Tel Comments at 15.

<sup>69</sup> We understand that under Title II of the ADA and the Department of Justice’s implementing regulations, generally speaking, a correctional authority would need to have a strong justification—presumably based on evidence of “undue financial and administrative burdens”—for withholding consent to an ICS provider’s provision of access to the most effective forms of TRS. See 28 CFR § 35.164 (public entities are not required to take any action that they can demonstrate would result in undue financial and administrative burdens). The burden is on the correctional authority to establish undue burden, and the authority must still “take any other action that would not result in . . . such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the [correctional authority].” *Id.*

<sup>70</sup> See ZP Comments at 9 (confidential) (noting that “[

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requires [

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<sup>71</sup> 47 U.S.C. § 225(b)(1). We do not, however, preclude an ICS provider from satisfying its TRS access obligations by delegating the performance of some of those responsibilities to the correctional authority, provided that the end result of such delegation complies with our rules.

<sup>72</sup> See Accessibility Coalition Reply Comments at 10-12 (explaining that the costs from the Commission implementing these proposed rules are minimal compared to the benefits); NDRN Reply Comments at 13-16 (noting (continued....))

Indeed, as a number of commenters point out, inmate calling services and TRS providers are already partnering to provide access to Internet-based forms of TRS in hundreds of facilities.<sup>73</sup> Further, it appears that the availability at correctional facilities of the broadband connections needed for Internet-based TRS has increased dramatically since the onset of the COVID-19 pandemic, due to the “exponentially” growing demand for video visitation services, which also require a broadband connection.<sup>74</sup> According to NCIC, “[t]he only jails not requiring video visitation are the small city and county facilities, generally with a population below 50 average daily population (ADP).”<sup>75</sup> As for user devices, in contrast to the situation ten years ago, when this proceeding commenced, “now almost all [inmate calling services] bids include the provision of tablets to permit incarcerated persons to access [inmate calling services] within their cells.”<sup>76</sup> In general, Internet-based TRS can be accessed from such tablets through downloadable software applications available from TRS providers.<sup>77</sup>

25. Providing access to Internet-based TRS that meets the security needs of correctional facilities may pose some technical challenges, but the record indicates that by working together, inmate calling services and TRS providers have been able to overcome such challenges.<sup>78</sup> For example, ZP states that, due to the call recording and monitoring capabilities that inmate calling services providers already have in place, “ZP has not had any security problems providing VRS to incarcerated people.”<sup>79</sup>

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that courts have found that the marginal cost increases from translation from videophone conversations is *de minimis* and that security risks have generally been overstated).

<sup>73</sup> Hamilton Relay Comments at 3 (explaining that Hamilton Relay is currently providing IP CTS to some carceral facilities without charge to any party while adhering to the Commission’s current rules); ZP Comments at 8-12 (confidential) (discussing its firsthand experience providing VRS in correctional facilities); *see also* ZP Comments at 10 (redacted) (“ZP has not had any security problems providing VRS to incarcerated people. . . . Indeed, given the safeguards that are in place, ZP is not aware of any security problems that have resulted from our provision of VRS in correctional facilities.”); GTL Comments at 6 (noting that “GTL looks forward to working cooperatively with corrections officials and disability access providers to implement additional technologies for inmates and their families and friends with disabilities as those technologies become available.”); NCIC Comments at 2 (“In general, ICS providers are now offering hearing-impaired-friendly communications with products such as messaging (text and email), remote video visitation and links to VRS and VRI services.”); Securus Comments at 3-6 (describing how Securus makes VRS available to inmate calling services users).

<sup>74</sup> NCIC Comments at 2.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 15. Material appended to PayTel’s comments indicates that a caption telephone suitable for using CTS or IP CTS can be purchased for \$75 to \$99, while a tablet enabling access to VRS costs \$329. PayTel Comments, Exh. 4. These estimates, which are comparable to the “typical price” of \$239 PayTel estimates for a TTY, indicate that, except in very small facilities, providing appropriate equipment for accessing TRS is unlikely to be burdensome to inmate calling services providers.

<sup>77</sup> *See, e.g., Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Report and Order and Order, 32 FCC Rcd 5891, 5900-01, para. 18 (2017) (*2017 VRS Order*).

<sup>78</sup> ZP Comments at 9-10 (confidential version).

<sup>79</sup> *Id.* at 10. NCIC suggests that some technical challenges remain, stating that inmate calling services providers “have been working diligently, mainly with Purple Communications, to offer a secure connection to Purple’s Video Relay Service platform but there have been setbacks resulting from the absence of web-based access to Purple’s VRS operator platform.” NCIC Comments at 2-3. However, ZP (the product of a merger, completed in February 2020, between Purple Communications and another VRS provider) disputes NCIC’s allegations regarding the Purple platform, stating that “VRS can easily be provided, and is, in fact, being provided in correctional facilities without  
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26. Therefore, we require that inmate calling services providers take all steps necessary to ensure that access to an appropriate relay service is made available promptly to each inmate who has a communication disability. In particular, inmate calling services providers must:

- Make all necessary contractual and technical arrangements to ensure that, consistent with the security needs of a correctional facility, incarcerated individuals eligible to use TRS<sup>80</sup> can access at least one certified provider of each form of TRS.<sup>81</sup>
- Work with correctional authorities, equipment vendors, and TRS providers to ensure that (1) screen-equipped communications devices such as tablets, smartphones, or videophones are available to incarcerated people who need to use TRS, and (2) all necessary TRS provider software applications are included, with any adjustments needed to meet the security needs of the institution, provide compatibility with institutional communication systems, and allow operability over the inmate calling services provider's network.
- Provide any assistance needed by TRS providers in collecting the required registration information and documentation from users and from the correctional facility.<sup>82</sup> Further, when an incarcerated person who has individually registered to use VRS, IP Relay, or IP CTS is released from incarceration or transferred to another correctional authority, the inmate calling service provider shall notify the TRS provider(s) with which the incarcerated person is registered.

27. *Scope of the TRS Access Requirement.* We initially apply this requirement to inmate calling services providers serving any facility where broadband is available,<sup>83</sup> if the average daily population of all facilities in the governing jurisdiction totals 50 or more incarcerated persons.<sup>84</sup> As noted

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such web-based access.” ZP Reply Comments at 4. ZP adds that “[w]e have successfully partnered with ICS providers to facilitate access to VRS in prisons and jails throughout the country. Any implication that ZP or its affiliates are somehow responsible for any ICS provider’s failure to offer incarcerated people access to VRS is wholly inaccurate.” *Id.* at 4.

<sup>80</sup> Under the rule adopted herein, we do not require the inmate calling services provider to make such determinations of eligibility.

<sup>81</sup> For relay services offered through state TRS programs (TTY-based TRS, STS, and CTS), state regulators typically authorize a single provider to offer the relay service throughout the state. For Internet-based forms of TRS (VRS, IP Relay, and IP CTS), the Commission permits more than one service provider to seek certification to offer a relay service nationwide. For VRS and IP CTS, there are currently multiple certified providers. We permit, but do not require, that inmate calling services providers establish connections with more than one VRS or IP CTS provider.

<sup>82</sup> See *infra* paras. 49-61.

<sup>83</sup> Congress has recently acted to make broadband more widely available. See 47 U.S.C. ch. 16; 47 CFR § 54.1900-04. Because the bandwidth required for various forms of TRS can change as technology develops, the rule we adopt at this time does not specify a minimum speed or bandwidth for broadband service. To the extent an inmate calling services provider is uncertain about whether the Internet access service can support all forms of TRS, the inmate calling services provider should obtain documentary support from a certified TRS provider as to whether the available speed or bandwidth is sufficient to support each form of Internet-based TRS.

<sup>84</sup> By “jurisdiction,” we mean the state, city, or county operating a correctional facility (or for federal facilities, the United States). The rule applies, for example, to a state correctional facility with an average daily population of fewer than 50 incarcerated persons, where broadband service is available, if the total average daily population for all facilities in the state is 50 or more incarcerated persons.

above, the current record indicates that in such facilities, the broadband connections and video-capable devices needed for, e.g., VRS access are already being routinely provided for inmate use as part of video visitation systems.<sup>85</sup> In such facilities, where broadband is *not* available, we do not require an inmate calling services provider to provide access to the three Internet-based forms of TRS—VRS, IP CTS, and IP Relay—but we do require that inmate calling services providers provide access to non-Internet Protocol CTS,<sup>86</sup> as well as TTY-based TRS and STS, as broadband service is not needed for these forms of TRS.<sup>87</sup>

28. We defer a decision on the application of this requirement in those jurisdictions where the average daily population of incarcerated persons is less than 50, to allow further consideration of the costs and benefits of expanded TRS access in such facilities, based on a more fulsome record.<sup>88</sup> However, we stress that the TRS access obligations of correctional authorities under Title II of the ADA (and analogous laws governing federal authorities) are not subject to any population size limitation. Accordingly, to ensure that TRS is available to incarcerated persons to the fullest extent possible,<sup>89</sup> we believe the TRS access requirements of inmate calling services providers should be at least coextensive with those of correctional authorities.<sup>90</sup> Therefore, in the Further Notice, we seek further comment on extending the obligation to provide access to additional forms of TRS, to include jurisdictions with an average daily population of fewer than 50 incarcerated persons.<sup>91</sup>

29. *Legal Authority.* We find that the Commission has legal authority to adopt this rule. Section 225(b) of the Act directs the Commission to “ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to [individuals with communications disabilities] in the United States,”<sup>92</sup> and no party contends that

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<sup>85</sup> See NCIC Comments at 2 (“The only jails not requiring video visitation are the small city and county facilities, generally with a population below 50 average daily population (ADP).”).

<sup>86</sup> Conversely, where broadband service is available and the provision of IP CTS access is required by our rules and provided by the inmate calling services provider in the facility, we do not require inmate calling services providers to provide access to non-Internet Protocol CTS in that facility. See Appx. B (amending 47 CFR § 64.6040).

<sup>87</sup> See 2015 ICS Order, 30 FCC Rcd at 12875, para. 227; 47 U.S.C. § 225(c); 47 CFR §§ 64.601(b), 64.603. To consolidate the rule provisions addressing the specific TRS access obligations of inmate calling service providers, we amend section 64.6040 of our rules to incorporate the existing obligation to provide access to TTY-based TRS and STS. See Appx. B (adding paragraph (b)(1) to section 64.6040). Because this change merely codifies an existing obligation, an additional comment is unnecessary, and we have good cause to forgo seeking such comment under 5 U.S.C. § 553(b).

<sup>88</sup> Two commenters have raised concerns that a broadened TRS access requirement could impose substantial costs on small rural jails. Pay Tel Comments at 14-16; NCIC Comments at 5-6. However, there is little quantitative evidence in the record regarding the extent of this alleged burden.

<sup>89</sup> See 47 U.S.C. § 225(b)(1) (TRS to be made available “to the extent possible”).

<sup>90</sup> As noted above, to justify less than full compliance with the Department of Justice’s regulations implementing Title II of the ADA, a correctional authority “has the burden of proving that compliance with this subpart” would “result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.” 28 CFR § 35.164.

<sup>91</sup> We also note that the current rule remains universally applicable; therefore, an inmate calling services provider must ensure that access to the “mandatory” forms of TRS, traditional TRS and STS, is universally available, including in jurisdictions with average daily populations below 50.

<sup>92</sup> 47 U.S.C. § 225(b)(1).



incarcerated people are excluded from this mandate.<sup>93</sup> In addition, section 225(c) requires that each carrier provide TRS in compliance with the Commission's regulations "throughout the area in which it offers service."<sup>94</sup> A carrier may satisfy its obligation by providing TRS "individually, through designees, through a competitively selected vendor, or in concert with other carriers."<sup>95</sup>

30. To the extent that the *2015 ICS Order* could be read to indicate that the Commission lacked authority to mandate the provision of VRS, IP Relay, CTS, and IP CTS in a carceral setting in the absence of a general mandate, we change course from such interpretation. We have long held that these services are TRS,<sup>96</sup> and as noted above, section 225(c) of the Act requires common carriers to offer TRS in compliance with the Commission's TRS regulations.<sup>97</sup> We therefore find that we have authority to adopt rules requiring that access to these services be provided by inmate calling services providers, notwithstanding the Commission's prior discretionary determinations not to mandate the provision of such services by carriers serving the general population.<sup>98</sup>

31. We also find that inmate calling services providers that are classified as providers of interconnected VoIP service are subject to these requirements pursuant to our Title I ancillary jurisdiction. Ancillary jurisdiction may be employed, in the Commission's discretion, where Title I of the Act gives the agency subject matter jurisdiction over the service to be regulated and the assertion of jurisdiction is "reasonably ancillary to the effective performance of [its] various responsibilities."<sup>99</sup> More specifically, as the Commission has previously held, Title I of the Act gives the Commission subject matter jurisdiction over "all interstate and foreign commerce in communication by wire or radio" and "all persons engaged within the United States in such communication," and that interconnected VoIP services are covered by the statutory definitions of "wire" and "radio."<sup>100</sup> In 2007, the Commission also held that imposing the statutory TRS obligations of common carriers on interconnected VoIP service providers is "reasonably ancillary" to the Commission's responsibility to ensure the availability of TRS under section 225(b)(1), and would give full effect to the purposes underlying section 225(b)(1), as enumerated in that

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<sup>93</sup> See *id.* (identifying an underlying goal of section 225 is to carry out the purpose of 47 U.S.C. § 151 "to make available to all individuals in the United States a rapid, efficient nationwide communication service") (emphasis added); see also Hamilton Relay Comments at 3; ZP Comments at 16; GTL Comments at 4.

<sup>94</sup> 47 U.S.C. § 225(c).

<sup>95</sup> *Id.*

<sup>96</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Internet-based Captioned Telephone Service*, CG Docket No. 03-123, Declaratory Ruling, 22 FCC Rcd 379 (2007) (*2007 TRS Declaratory Ruling*) (IP CTS is a telecommunications relay service.); *2003 TRS Declaratory Ruling*, 18 FCC Rcd at 16121, para. 1 (declaring that captioned telephone voice carryover service (later known as "CTS") is a telecommunications relay service.); *2002 TRS Declaratory Ruling*, 17 FCC Rcd at 7779, para. 1 (IP Relay is a telecommunications relay service.); *2000 TRS Order*, 15 FCC Rcd at 5152-54, paras. 22-26 (VRS is a telecommunications relay service.).

<sup>97</sup> 47 U.S.C. § 225(c).

<sup>98</sup> As noted above, given the wide availability of these relay services as a practical matter, a general mandate to provide them in non-carceral settings may not be necessary. *Supra* para. 21.

<sup>99</sup> *United States v. Southwestern Cable Co.*, 392 U.S. 157, 177-78 (1968); see also *NCTA v. Brand X Internet Services*, 545 U.S. 967, 996 (2005) (stating that after designating cable modem service as an information service, "the Commission remains free to impose special regulatory duties on facilities-based [information service providers] under its Title I ancillary jurisdiction").

<sup>100</sup> *2007 TRS Interconnected VoIP Order*, 22 FCC Rcd at 11292, para. 34.

section.<sup>101</sup> For the same reasons, asserting ancillary jurisdiction to impose TRS obligations on ICS providers is likewise reasonably ancillary to the Commission's section 225(b)(1) responsibilities and "will serve the core objectives of section 225 and our TRS rules by making TRS widely available and by providing functionally equivalent services for the benefit of individuals with hearing or speech disabilities."<sup>102</sup>

## **2. Direct Video Communication by Incarcerated People with Communication Disabilities**

32. We also require that where inmate calling services providers are required to offer access to all forms of TRS (i.e., in jurisdictions with average daily populations of 50 or more, where broadband service is available), they also must provide access to the direct, point-to-point video communication services provided by VRS providers.<sup>103</sup> Many people who are deaf and whose primary language is ASL, and who are thus eligible to use VRS, have family, friends, and associates who are also deaf and whose primary language is ASL.<sup>104</sup> To facilitate functionally equivalent communication among ASL users, the Commission has long required VRS providers to allow point-to-point calls between ASL users who have been assigned VRS telephone numbers.<sup>105</sup>

33. The record indicates that access to direct video communication is similarly critical to ensuring functionally equivalent communication between incarcerated VRS users and the important people in their lives.<sup>106</sup> As the NDRN observes, "because Deaf individuals who use sign language do not need assistance from a relay service to understand one another, they are able to communicate most effectively through direct, face-to-face conversation."<sup>107</sup> Similarly, the Accessibility Coalition notes that

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<sup>101</sup> As the Commission explained, section 225(b)(1) "imposes on the Commission a duty to ensure the availability of TRS in order to: (1) 'carry out the purposes established under [section 1 of the Act];' (2) make available to 'all' individuals in the United States a rapid, efficient nationwide communication service; and (3) 'increase the utility of the telephone system' in the United States." *Id.* at 11292-93, para. 35.

<sup>102</sup> *Id.*

<sup>103</sup> See *Telecommunications Relay Services and Speech-to-Speech for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP Enabled Services*, CG Docket No. 03-123, CC Docket No. 98-67, WC Docket No. 05-196, Second Report and Order and Order on Reconsideration, 24 FCC Rcd 791, 820-22, paras. 65-67 (2008) (*Second TRS Numbering Order*).

<sup>104</sup> See, e.g., *Structure and Practices of the Video Relay Service Program et al.*, CG Docket Nos. 10-51 and 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8683, para. 164 (2013) (noting that "upwards of 80-90 percent of all calls made by ASL users on the VRS network are point-to-point" calls between two or more persons with disabilities eligible for VRS).

<sup>105</sup> *Second TRS Numbering Order*, 24 FCC Rcd at 820-22, paras. 65-68 (requiring VRS providers to facilitate direct video calling between VRS users); see also *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Report and Order, Notice of Inquiry, Further Notice of Proposed Rulemaking, and Order, 32 FCC Rcd 2436, 2452-55, paras. 38-45 (2017) (amending rules to provide for issuance of VRS telephone numbers to hearing ASL users for direct video calling with VRS users).

<sup>106</sup> See Accessibility Coalition Comments at 16-18; Joint Advocates Comments at 5-6; NDRN Comments at 10-16; Securus Comments at 4; United Church May 14, 2021 *Ex Parte* at 2-3 (describing meetings where individuals who were incarcerated or had incarcerated family members explained the importance of direct video communication to prevent isolation and the insufficiency of alternatives where both parties use ASL to communicate with each other).

<sup>107</sup> NDRN Comments at 11.

“[p]roviding direct communication services will . . . ensure that incarcerated people with disabilities are able to avoid further isolation within carceral facilities by allowing them to practice their primary form of communication.”<sup>108</sup> Therefore, incarcerated individuals with hearing and speech disabilities who require the use of video calling for effective communication must be afforded the same access to direct video calling that incarcerated individuals without hearing and speech disabilities are given for voice calling. The record indicates that providing access to ASL direct video communication, in addition to VRS, would not impose a significant additional cost or other burden on inmate calling services providers, as VRS providers already have the capability to provide this service in conjunction with VRS.<sup>109</sup>

34. We have authority to adopt this requirement pursuant to the Commission’s Title I ancillary jurisdiction. As the Commission explained in 2008, when it required VRS providers to allow point-to-point calls between two ASL users, requiring that providers facilitate point-to-point communications between persons with hearing or speech disabilities is reasonably ancillary to the Commission’s responsibilities in several parts of the Act.<sup>110</sup> While point-to-point services are not themselves relay services, point-to-point services:

even more directly support the named purposes [of sections 1 and 225, to “make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation”]: they are more rapid in that they involve direct, rather than interpreted, communication; they are more efficient in that they do not trigger the costs involved with interpretation or unnecessary routing; and they increase the utility of the Nation’s telephone system in that they provide direct communication—including all visual cues that are so important to persons with hearing and speech disabilities.<sup>111</sup>

35. We note that for ASL direct video communication to be functionally equivalent to inmate calling services, which allow an incarcerated individual to reach an approved party by dialing a ten-digit number over the telephone network, the video communication platform must similarly allow direct dialing of the video telephone numbers assigned to approved parties who may receive video calls from an incarcerated ASL user. In addition, the video communications platform must interoperate with the video communications capabilities of parties called by an incarcerated ASL user.<sup>112</sup> While VRS providers provide such directory access and interoperability, the video visitation systems currently made available at correctional facilities may not have them.<sup>113</sup> In the event that an inmate calling services provider

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<sup>108</sup> Accessibility Coalition Comments at 17.

<sup>109</sup> ZP Reply at 7 (“After all, the first leg of a VRS call placed by an incarcerated person is essentially a direct video call between the incarcerated person and a VRS provider’s CA.”).

<sup>110</sup> *Second TRS Numbering Order*, 24 FCC Rcd at 820-21, para. 66.

<sup>111</sup> *Id.* at 821, para. 67.

<sup>112</sup> *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd 3396, 3398-99, paras. 4-5 (2019) (detailing the need for and use of telephone numbers and the TRS Numbering Directory for the provision of point-to-point direct communications with VRS users).

<sup>113</sup> 47 CFR § 64.613(a)(4) (“Only the TRS Numbering Administrator, Internet-based TRS providers, and Qualified Direct Video Entities may access the TRS Numbering Directory.”).

wishes to provide direct video communication without the involvement of a VRS provider, the inmate calling services provider should request authorization as a Qualified Direct Video Communication Entity and file an appropriately supported request for waiver of the rule that limits Qualified Direct Video Communications Entity authorizations to call center operators.<sup>114</sup>

### 3. Compliance Date for Certain Amendments to Section 64.6040

36. To allow a reasonable time for inmate calling services providers that do not currently provide access to additional forms of TRS and to ASL direct video communication in accordance with the rules adopted herein, we set January 1, 2024, as the deadline for compliance with the above-discussed amendments to section 64.6040 of the rules. To the extent that some providers' current contractual arrangements do not enable compliance with that rule as amended, this extended compliance date will allow inmate calling services providers a reasonable time to negotiate and implement any necessary changes to contracts with correctional authorities and TRS providers, and to make arrangements for the provision of user devices, secure TRS software, and any other necessary changes in their operations.

### 4. Charges for TRS and ASL Direct Video Calls

37. We amend our rules to clarify section 64.6040, which prohibits inmate calling services providers from assessing charges for intrastate, interstate, or international TTY-based TRS calls, and to expand the scope of that rule to cover all forms of TRS, as well as direct video calls conducted in ASL.<sup>115</sup>

38. *Clarifying Amendment on Charging for TTY-based TRS.* Section 64.6040(b) currently states that “[n]o [inmate calling services] Provider shall levy or collect any charge or fee for TRS-to-voice or voice-to-TTY calls.”<sup>116</sup> However, it appears that some inmate calling services providers may be interpreting this rule to allow the assessment of a charge on the called party,<sup>117</sup> or a separate fee for using or accessing TTY equipment.<sup>118</sup> Such stratagems contravene the rule's purpose to ensure that incarcerated people have free access to relay service. Therefore, we amend section 64.6040 to expressly prohibit inmate calling services providers from levying or collecting any charge on *any* party to an

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<sup>114</sup> See *id.* § 64.613(c)(1)(v) (requiring applicants for TRS Numbering Directory access as a Qualified Direct Video Entity to certify “that the applicant’s description of service meets the definition of direct video customer support and that the information provided is accurate and complete”); see also *id.* § 64.601(a)(15) (defining “direct video customer support” as “[a] telephone customer support operation that enables callers with hearing or speech disabilities to engage in real-time direct video communication in ASL with ASL speakers in a call center operation”); *id.* § 64.601(a)(32) (defining “Qualified Direct Video Entity” as “[a]n individual or entity that is approved by the Commission for access to the TRS Numbering Directory that is engaged in direct video customer support and that is the end-user customer that has been assigned a telephone number used for direct video customer support calls or is the designee of such entity”).

<sup>115</sup> See *2021 ICS Notice*, 36 FCC Rcd at 9652-53, paras. 288-92 (seeking comment on clarifying the prohibition of charges for TTY-based TRS calls and expanding the prohibition to prohibit charges for other forms of TRS). The Commission also sought comment on whether to allow ICS providers to charge for point-to-point video communications and other types of direct communications made available to incarcerated people with communications disabilities. *Id.* at 9655, paras. 297-99.

<sup>116</sup> 47 CFR § 64.6040(b); *2015 ICS Order*, 30 FCC Rcd at 12923, Appx. A (adoption of the rule section).

<sup>117</sup> Accessibility Coalition Comments, WC Docket No. 12-375, at 17-18 (filed Nov. 23, 2020).

<sup>118</sup> Letter from Blake E. Reid, Counsel to Telecommunications for the Deaf and Hard of Hearing (TDI), to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, CG Docket Nos. 10-51 and 03-123, at 2-3 (filed Feb. 4, 2021) (citing a memorandum by an inmate calling service provider arguing that incarcerated individuals who are deaf and hard of hearing can be charged to access VRS equipment to make calls, as well as the provider’s webpage encouraging this practice).

intrastate, interstate, or international TTY-based TRS call, regardless of whether the party is the caller or the recipient and whether the party is an incarcerated person or is communicating with such individual, and regardless of whether the charge is characterized as a charge for the call itself or for the use of a device needed to make the call.

39. *Prohibition of Charges for Intrastate, Interstate, and International VRS, STS, and IP Relay.* In light of our action above to expand the kinds of relay services available to incarcerated people, we also amend section 64.6040 to prohibit inmate calling services providers from charging either party to a VRS, STS, or IP Relay call, whether intrastate, interstate, or international, and whether characterized as a charge for the call itself or for use of a device to make such a call.<sup>119</sup> We take this step for several reasons. First, as discussed further below, Congress has clearly expressed its intent that consumers in general must not be subject to charges that discourage the use of relay services, and that inmate calling services providers in particular are not entitled to compensation for each TRS call they carry.<sup>120</sup> Second, while our rules permit limited charges to be assessed for the use of TRS in other contexts,<sup>121</sup> the incarceration setting presents special considerations not present elsewhere. Incarcerated people tend to have extremely limited financial resources, and, due to their incarceration, do not have the same ability as other telephone users to choose among competitive telephone service offerings.<sup>122</sup> Further, as the history of this proceeding amply demonstrates, telephone charges for inmate calling services are typically much higher than for ordinary telephone service.<sup>123</sup> Additionally, we find support in the record for prohibiting such charges.<sup>124</sup> Finally, in contrast with CTS and IP CTS (which present special considerations that are discussed below), due to the inherent nature of these services, we find it unlikely that VRS, STS, and IP Relay would be overused by incarcerated individuals who do not need these services.<sup>125</sup> Therefore, to ensure that incarcerated individuals who need these services are not deterred from using them by

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<sup>119</sup> To the extent that an inmate calling services provider incurs costs associated with the provision of such devices, we do not prohibit recovery of such costs in the provider's generally applicable rates for voice calls, provided such generally applicable rates comply with our rules.

<sup>120</sup> 47 U.S.C. §§ 225(d)(1)(D), 276(b)(1)(A).

<sup>121</sup> 47 CFR § 64.604(c)(4) (providing that "TRS users shall pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from the point of origination to the point of termination").

<sup>122</sup> 2021 ICS Order, 36 FCC Rcd at 9531-35, paras. 31-37.

<sup>123</sup> *Id.* at 9131, 9134, paras. 30, 34-35.

<sup>124</sup> See Accessibility Coalition Comments at v (noting that "[t]he Commission should adopt the necessary changes to . . . ensure that incarcerated people with disabilities are able to use these services without charge").

<sup>125</sup> Like TTY-based TRS, VRS, STS, and IP Relay subject callers to recurring delays while a CA converts voice to text or ASL, and the reverse. These delays interrupt the natural flow of conversation and substantially lengthen the duration of the call. In addition, VRS requires the use of ASL, making it unlikely that incarcerated people who do not need VRS for functionally equivalent communication will seek to use it. See ZP Comments at 11 (confidential). Although IP Relay has been abused in the past, see *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Misuse of Internet Protocol (IP) Relay Service and Video Relay Service*, CG Docket No. 03-123, Further Notice of Proposed Rulemaking, 21 FCC Rcd 5478, 5480-82, paras. 6-9 (2006) (initiating a rulemaking and detailing misuse of IP Relay), it is unlikely to be abused in the incarceration setting given the ability of inmate calling services providers and correctional authorities to supervise such use and monitor the content of conversations.

unaffordable costs,<sup>126</sup> we prohibit the imposition of charges on any party to an inmate calling services call for the use of these relay services or the devices needed to access them.

40. *Legal Authority.* We conclude that we have statutory authority to take this step under section 225 of the Act, which expressly directs the Commission to ensure the availability of interstate *and intrastate* TRS.<sup>127</sup> Indeed, section 225 affords the Commission, without limitation, “the same authority, power, and functions with respect to *common carriers engaged in intrastate communication* as the Commission has in administering and enforcing the provisions of this [Act] with respect to any common carrier engaged in interstate communication.”<sup>128</sup> And as discussed above, the Commission has previously ruled it has authority to apply such section 225 regulations to providers of interconnected VoIP service providers pursuant to Title I ancillary jurisdiction.<sup>129</sup> Section 225 also directs the Commission to ensure that the rates paid for TRS are *no greater than* the rates for functionally equivalent voice services,<sup>130</sup> but does not preclude the Commission from setting a lower limit where necessary or appropriate to ensure that TRS is available in a particular setting.

41. Further, such a prohibition is consistent with section 276 of the Act, which requires the Commission to ensure that inmate calling services providers “are fairly compensated for each and every completed intrastate and interstate call.”<sup>131</sup> Because TRS calls are expressly excluded from this mandate,<sup>132</sup> section 276 does not entitle inmate calling services providers to receive *any* compensation for TRS calls.<sup>133</sup>

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<sup>126</sup> Further, due to the iterative nature of a CA’s intermediating interactions with callers using VRS, STS, IP Relay, and TTY-based TRS, these types of TRS calls take longer than a voice call to communicate the same information. Therefore, if the per-minute inmate calling services rate for a voice call were applicable, total charges for such TRS calls would be substantially greater than for an equivalent voice call.

<sup>127</sup> See 47 U.S.C. § 225(b)(1). Congress expressly carved section 225 out from the Act’s general reservation of state authority over intrastate communications. See *id.* § 152(b) (using the phrase: “Except as provided in sections 223 through 227 of this title, inclusive”). Responsibility for administering TRS is shared with the states only to the extent that a state applies for and receives Commission approval to exercise such responsibility. See *id.* § 225(c), (f)-(g). In addition, under section 201 of the Act, the Commission has authority to regulate the interstate charges and practices of common carriers. *Id.* § 201.

<sup>128</sup> *Id.* § 225(b)(2) (emphasis added).

<sup>129</sup> 2007 TRS Interconnected VoIP Order, 22 FCC Rcd at 11292-97, paras. 32-43 (extending the scope of section 225 requirements to apply to interconnected VoIP providers).

<sup>130</sup> See 47 U.S.C. § 225(d)(1)(D). This language sets a ceiling on the permissible charges for TRS calls, but does not preclude the Commission from setting a lower limit where necessary or appropriate to ensure that TRS is available in a particular setting.

<sup>131</sup> *Id.* § 276(b)(1)(A).

<sup>132</sup> *Id.* (stating that emergency calls and TRS calls “shall not be subject to such compensation”).

<sup>133</sup> The regulation of intrastate TRS rates is also consistent with the D.C. Circuit’s decision regarding the limits of the Commission’s authority to regulate charges for intrastate inmate calling services under section 276 of the Act. In *GTL v. FCC*, the D.C. Circuit ruled that section 276, by requiring that payphone service providers (including inmate calling services providers) be “fairly compensated” for every call using their phones, did not grant the Commission authority to cap intrastate rates based on a broader “just, reasonable, and fair” test. See *Global Tel\*Link v. FCC*, 866 F.3d 397, 402-12 (D.C. Cir. 2017) (*GTL v. FCC*). Here, we do not purport to regulate intrastate rates under such a test; rather, as discussed above, we rely on section 225, which both explicitly applies to intrastate service and directs the Commission to set limits on charges for TRS calls.

42. We do not apply this absolute prohibition to CTS and IP CTS calls. Unlike VRS, STS, and IP Relay, use of CTS and IP CTS does not require callers to accept delays in the natural flow of conversation or impose other inherent limitations, such as the necessity for VRS users to be able to sign in ASL.<sup>134</sup> As a result, a telephone call using CTS or IP CTS is not significantly less convenient for a user than is an ordinary voice call, and unlike the other services discussed above, CTS and IP CTS are technically (although not legally) usable for ordinary phone calling by consumers who have no hearing or speech disabilities. Because voice services and telephones are relatively inexpensive for the general public, ordinarily there may be no particular incentive for a person without such disabilities to register for or use CTS and IP CTS. However, in the incarceration setting, where callers face unusually high telephone charges that they often can ill afford to pay, making the service available without charge could create a substantial incentive for inappropriate use of CTS and IP CTS by incarcerated people with no actual need for these services.<sup>135</sup> Therefore, rather than prohibiting any charge for the use of these services, we require adherence to the statutory ceiling on TRS charges. In other words, we prohibit an inmate calling services provider from assessing—on either party to a CTS or IP CTS call, for either the service or the device(s) used—any charge in excess of the total amount that the inmate calling services provider charges, in the same correctional facility, for a non-relay voice telephone call of the same duration, time-of-day, jurisdiction, and distance. In effect, we are permitting ICS providers to charge for the voice component (but not for the TRS component) of the CTS or IP CTS call at the same rate charged to hearing users for an equivalent stand-alone voice call.

43. Similarly, we prohibit inmate calling services providers from assessing, on either party to a direct video call conducted in ASL, any charge in excess of the total amount that the inmate calling services provider charges, in the same correctional facility, for a non-relay voice telephone call of the same duration, time of day, jurisdiction, and distance. Although ASL direct video calls are not relay calls *per se*, placing such calls is necessary to ensure that functionally equivalent communication is available to persons who are deaf or hard of hearing and whose primary language is ASL. Therefore, for the same reason underlying the statutory prohibition on charging more for a relay call than for an equivalent voice call, we conclude that our rules should similarly prohibit inmate calling services providers from charging more for an ASL direct video call than for an equivalent voice call.

## 5. Expanding Reporting Requirements Regarding TRS and Disability Access

44. As a part of the Commission's Annual Reporting requirement, inmate calling services providers must submit certain information related to accessibility: (1) "[t]he number of TTY-based Inmate Calling Services calls provided per facility during the reporting period"; (2) "[t]he number of dropped calls the . . . provider experienced with TTY-based calls"; and (3) "[t]he number of complaints that the . . . provider received related to[,] e.g., dropped calls, [or] poor call quality[,] and the number of

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<sup>134</sup> Telephone caption service "offers consumers the benefit of operating more like conventional voice telephone service, with . . . the nearly simultaneous delivery of the actual voice of the called party and written text of what the called party has said." *2003 TRS Declaratory Ruling*, 18 FCC Rcd at 16127, para. 16. For captioning telephone service to work as intended, captions must be delivered "fast enough so that they keep up with the speed of the other party's speech," and "if captions are not keeping up with the speech (although a short delay is inevitable), at some point the provider is no longer offering relay service and the call is not compensable." *2007 TRS Declaratory Ruling*, 22 FCC Rcd at 388-89, para. 22 & n.69.

<sup>135</sup> It is not easy to determine in any given instance whether an individual with, e.g., moderate hearing loss needs to use a captioned telephone service to achieve functionally equivalent telephone communication. Further, our rules currently require only that IP CTS providers obtain a self-certification from the user that he or she requires the service for effective communication. See 47 CFR § 64.611(j)(1)(v). They do not require, e.g., a qualifying examination by a health or hearing professional.

incidents of each by TTY and TRS users.”<sup>136</sup> WCB recently revised the instructions and reporting template to require that providers report, on a facility-by-facility basis, any ancillary service charges they impose specifically for accessing and using TTY equipment and other disability-related inmate calling services technologies.<sup>137</sup>

45. Given that we are expanding the scope of our access mandate to all forms of TRS, and consistent with the language including other disability-related inmate calling services technologies in the *2022 ICS Annual Reports Order*, we expand these reporting requirements to include all relay services. We require inmate calling services providers to list, at a minimum, for each facility served, the types of TRS that can be accessed from the facility and the number of completed calls, dropped calls, and complaints for TTY-TTY calls, ASL direct video calls, and each type of TRS for which access is provided. As in the *2015 ICS Order*, where the Commission applied these reporting requirements to TTY-based TRS calls, we conclude that requiring this limited amount of reporting by inmate calling services providers will facilitate monitoring of call-related issues, encourage greater engagement by the advocacy community, and provide the Commission the basis to take further action, if necessary, to improve incarcerated persons’ access to TRS.<sup>138</sup> Moreover, in the event that some correctional authorities refuse to allow access to TRS,<sup>139</sup> such reporting will provide the Commission with valuable data showing to what extent the rules adopted here are successfully implemented.

46. There is robust support in the record for this step.<sup>140</sup> While ZP opposes this expansion, claiming it would impose “burdensome reporting requirements,”<sup>141</sup> we find that the additional burden associated with providing limited reporting on this small category of calls is unlikely to be large and is outweighed by the benefits such reporting will offer in terms of greater transparency and heightened accountability on the part of inmate calling services providers.<sup>142</sup> We are not persuaded that expanded reporting requirements would discourage inmate calling services and TRS providers from providing access to additional forms of TRS<sup>143</sup>—given that our amended rules *require* inmate calling services providers to provide such expanded access in any jurisdiction with an average daily population of more than 50, where broadband service is available. However, we do not find it necessary to require inmate calling services providers to report “the amount of call time spent on each form of accessible communication” and “the number of individuals in each carceral facility registered to use” each service, as the Accessibility Coalition suggests.<sup>144</sup> We are not convinced at this time that the additional benefits from collecting such information would justify the extra burden involved in gathering it.

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<sup>136</sup> *Id.* § 64.6060; *2015 ICS Order*, 30 FCC Rcd at 12882, para. 244.

<sup>137</sup> *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order, DA 22-676, at 7, para. 17 (WCB June 24, 2022) (*2022 ICS Annual Reports Order*).

<sup>138</sup> *2015 ICS Order*, 30 FCC Rcd at 12883-84, paras. 247-49.

<sup>139</sup> *See, e.g.*, Joint Advocates Comments at 5 (noting that “[e]ven after a lawsuit and settlement in . . . Maryland, the prison system refused to provide telecommunications or other accommodations required by disability law and [a] settlement agreement”).

<sup>140</sup> *E.g.*, Accessibility Coalition Comments at 18-19; Leadership Conference Comments at 3; *see also* Accessibility Coalition Reply Comments at 16 (arguing that the reporting requirements should specify, among other things, “which forms of accessible communication are available at each facility”).

<sup>141</sup> ZP Comments at 15.

<sup>142</sup> *2015 ICS Order*, 30 FCC Rcd at 12882, para. 245.

<sup>143</sup> *See* ZP Comments at 15.

<sup>144</sup> Accessibility Coalition Reply Comments at 16.



47. *Removal of the Safe Harbor.* In adopting the reporting requirement for TTY-based TRS in 2015, the Commission stated that “if an [inmate calling services] provider either (1) operates in a facility that allows the offering of additional forms of TRS beyond those we currently mandate or (2) has not received any complaints related to TRS calls, then it will not have to include any TRS-related reporting in [its] Annual Report . . . provided that it includes a certification from an officer of the company stating which prong(s) of the safe harbor it has met.”<sup>145</sup> Given the expanded reporting requirement for additional forms of TRS, and the importance of transparency into the state of accessible communications in incarceration settings, we conclude that this safe harbor is no longer appropriate.

48. *Delegation of Authority.* We delegate authority to the Consumer and Governmental Affairs Bureau and WCB to implement this expanded reporting obligation. This delegation shall take effect on the date notice of this Order is published in the Federal Register. We find good cause for making this delegation take effect at that time because doing so will enable the Bureaus to move as expeditiously as practicable toward revising the instructions and reporting template for inmate calling services providers’ Annual Reports, as set forth above.<sup>146</sup> Given the importance of this expanded reporting to our efforts to ensure that incarcerated people with communication disabilities receive service that is functionally equivalent to that received by those without such disabilities, any unnecessary delay in this initiative would be inconsistent with the public interest.

## **B. Disability Access – Requirements for TRS Providers – TRS Registration**

49. To prevent waste, fraud, and abuse and allow the collection of data on TRS usage, our rules generally require that each individual using VRS, IP CTS, or IP Relay must be registered with a TRS provider. Further, VRS providers must submit user registration data to a central User Registration Database (User Database) administered under Commission supervision. Similar User Database registration and verification requirements apply to IP CTS providers. However, compliance with these requirements is not required until the User Database has been activated for registration of IP CTS users. Currently, our rules do not require that IP Relay registrations be submitted to the User Database.

50. As an alternative to individual registration, VRS providers may register videophones maintained by businesses, organizations, government agencies, or other entities and designated for use in private or restricted areas as “enterprise videophones.”<sup>147</sup> This alternative form of registration is not available to IP CTS providers.

51. Based on the record, we conclude that these TRS registration processes can be adapted to the incarceration context without major changes.<sup>148</sup> To explain how these rules would apply in that context, we first describe in detail the current registration requirements. Then we discuss how and why we are amending the rules to facilitate service to incarcerated people.

### **1. The Current TRS Registration System**

52. *Individual Registration.* To register individuals to use VRS, IP CTS, or IP Relay, a TRS provider must collect and maintain certain registration information from or regarding each prospective user. For VRS and IP CTS, this includes: the user’s full name; residential address; telephone number;

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<sup>145</sup> 2015 ICS Order, 30 FCCRcd at 12883, para. 246.

<sup>146</sup> See 5 U.S.C. § 553(d)(3).

<sup>147</sup> 47 CFR § 64.611(a)(6). Registration of public videophones is also permitted. *Id.*

<sup>148</sup> See Tidal Wave Comments at 2-4 (asserting that IP CTS can be provided under the current registration system); ZP Comments at 12-14 (suggesting amendments to adapt the enterprise registration system for VRS to the incarceration setting).

last four digits of the social security number or Tribal Identification number; date of birth; Registered Location (if applicable); dates of service initiation and (if applicable) termination; the date on which the user's identification was verified; and (for existing users only) the date on which the registered Internet-based TRS user last placed a point-to-point or relay call.<sup>149</sup> For IP CTS, a provider must also assign a unique identifier such as the electronic serial number (ESN) of the user's IP CTS device, the user's log-in identification, or the user's email address.<sup>150</sup>

53. In addition, to register individuals to use VRS or IP CTS, a TRS provider must obtain from each prospective user a certification, under penalty of perjury, that the user needs that form of TRS for effective communication and understands that the cost of the service is paid by a federal program.<sup>151</sup> In addition, as part of the IP CTS user certification, a TRS provider must obtain certification that "[t]he consumer understands that the captioning on captioned telephone service is provided by a live communications assistant who listens to the other party on the line and provides the text on the captioned phone," and that "[t]he consumer will not permit, to the best of the consumer's ability, persons who have not registered to use internet protocol captioned telephone service to make captioned telephone calls on the consumer's registered IP captioned telephone service or device."<sup>152</sup>

54. For registration of VRS and IP CTS users, the above registration data and certifications also must be submitted to the User Database.<sup>153</sup> Compensation for service to a new user is not paid until the user's identity has been verified by the administrator of the User Database.<sup>154</sup>

55. *Enterprise Registration for VRS.* The rules on VRS enterprise registration presuppose that telephone numbers will be assigned to specific video-capable devices (videophones). Before service can be provided pursuant to an enterprise registration, an individual must be designated by the business or agency as responsible for the videophone, and must provide a certification to the VRS provider that the individual "understands the functions of the videophone, [that] the cost of VRS calls made on the videophone is financed by the federally regulated Interstate TRS Fund, and . . . that the organization, business, or agency will make reasonable efforts to ensure that only persons with a hearing or speech disability are permitted to use the phone for VRS."<sup>155</sup> For each such device, in addition to the assigned telephone number, the VRS provider must submit to the User Database: (1) "[t]he name and physical address of the organization, business, or agency where the enterprise . . . videophone is located"; (2) "the Registered Location of the phone if that is different from the physical address"; (3) "the type of location

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<sup>149</sup> For IP Relay, the required registration is not expressly stated in the rules, but the Commission has interpreted the rule as requiring similar information. See *Misuse of Internet Protocol (IP) Relay Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 12-38 and 03-123, First Report and Order, 27 FCC Rcd 7866, 7972-73, para. 13 (2012) (requiring IP Relay providers verify IP Relay users in accordance with the standards set forth in the Commission's rules and requirements).

<sup>150</sup> 47 CFR § 64.611(j)(2)(D). This is not required for VRS because each VRS user is assigned a unique telephone number that is usable specifically for VRS. *Id.* § 64.611(a)(1).

<sup>151</sup> The specific wording of these required certifications is different for each service. See *id.* § 64.611(a)(3), (j)(1)(v).

<sup>152</sup> *Id.* § 64.611(j)(1)(v)(B), (D).

<sup>153</sup> *Id.* § 64.611(a)(4), (j)(2). As noted above, the database for IP CTS user registration has not yet been activated.

<sup>154</sup> *Id.* § 64.615(a)(6).

<sup>155</sup> *Id.* § 64.611(a)(6)(ii)(A). The certification may be signed and transmitted electronically. *Id.* § 64.611(a)(6)(ii)(B).

where the videophone is located”; (4) the date of initiation of service; (5) “[t]he name of the individual responsible for the videophone”; (6) “confirmation that the provider has obtained the required certification” from that individual; (7) “the date the certification was obtained by the provider”; and (8) “[w]hether the device is assigned to a hearing individual who knows sign language.”<sup>156</sup>

## 2. Changes in TRS Registration Rules

56. We intend that incarcerated VRS users may be registered under either individual or enterprise registrations. Because our rules do not authorize enterprise registration for IP CTS and IP Relay users, incarcerated users of those services currently must have individual registrations. To facilitate the use of these registration procedures in the correctional setting, we amend the TRS registration rules as described below.

57. *Individual Registration.* We amend our rules to facilitate individual registration of eligible incarcerated people with disabilities for any form of Internet-based TRS.<sup>157</sup>

58. We amend the rules to provide that the “residential address” specified for an incarcerated individual who has not previously registered with the VRS or IP CTS provider serving the facility shall be the address of the responsible correctional authority.<sup>158</sup> Further, because 911 calls by incarcerated individuals are not permitted in a correctional facility, “Registered Location”—that is, the physical location of the user<sup>159</sup>—need not be included. For IP CTS, the telephone number specified shall be the same telephone number used by the inmate calling service provider to identify ordinary voice telephone calls placed to or from persons incarcerated in the correctional facility. Further, given that devices are not uniquely assigned to users, the unique user identifier specified in an IP CTS registration should be a log-in ID, email address (if available and unique to the user), or other unique identifier, rather than the electronic serial number of the user’s device.<sup>160</sup> In addition, for incarcerated persons who do not have a social security number or Tribal Identification number, we allow TRS providers, as an alternative in such cases, to collect, and submit to the User Database, an identification number issued by the correctional authority.<sup>161</sup> The TRS provider should obtain and provide to the TRS Fund administrator the incarcerated

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<sup>156</sup> *Id.* § 64.611(a)(6)(iii).

<sup>157</sup> If an incarcerated individual is already registered to use VRS, IP Relay, or IP CTS, then the TRS provider may continue to provide service to a user under that individual registration—unless such registration is dependent on conditions that no longer apply during incarceration (e.g., if an IP CTS registration is tied to the electronic serial number (ESN) of a device that is no longer available to the individual). *See id.* § 64.611(j)(2)(i)(D).

<sup>158</sup> *See* Hamilton Relay Reply Comments at 4.

<sup>159</sup> 47 CFR § 64.601(a)(38).

<sup>160</sup> *See* Hamilton Relay Reply Comments at 4.

<sup>161</sup> Letter from Katherine Barker Marshall, Counsel to Global Caption, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 12-375, CG Docket No. 03-123 (filed Aug. 25, 2022) (Global Captions Aug. 25, 2022 *Ex Parte*). Pursuant to waivers previously issued by the Consumer and Governmental Affairs Bureau, VRS and IP CTS providers may collect and submit alternative documentation for users who have no social security number or Tribal Identification number. *See Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 30 FCC Rcd 1093, 1098-1100, paras. 13-14 (CGB 2015) (IP CTS waivers); *Structure and Practices of the Video Relay Services Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 10-51 and 03-123, Order, 30 FCC Rcd 4806, 4806, para. 1 (CGB 2015) (VRS waivers). However, such documents may not be available to or easily retrieved by an incarcerated person.

person's identification number and the name and address of the correctional facility providing the documentation.<sup>162</sup>

59. To ensure that eligible incarcerated individuals can be promptly registered to use VRS and IP CTS, we also amend the rule on verification of user registration data to allow TRS providers and the User Database administrator to accept documentation provided by an appropriate official of a correctional facility, such as a letter or statement from the official stating the name of the individual and that the individual resides in the facility, as verification of the identity and residence of an incarcerated individual seeking to use VRS or IP CTS.<sup>163</sup> This change will prevent delay or denial of registration of an incarcerated individual to use these forms of TRS, due to lack of credit history or acceptable alternative documentation verification of the information provided to the User Database.<sup>164</sup>

60. We do not find that additional changes to our individual registration rules are needed. By requiring inmate calling service providers to assist TRS providers in collecting the required registration information and documentation,<sup>165</sup> we believe we have sufficiently addressed concerns about TRS providers' ability to collect such information on their own.<sup>166</sup>

61. *Enterprise Registration for Incarcerated VRS Users.* As a number of commenters have pointed out, there are significant differences between correctional facilities and other enterprise contexts.<sup>167</sup> For example, as Hamilton Relay states, "[i]ncarcerated individuals are regularly moved among facilities, and the inmate calling services equipment they use may not move with them."<sup>168</sup> To facilitate enterprise registration for VRS in the correctional context, we agree with ZP that "a VRS provider should be able to register all the videophones and telephone numbers providing service to a single system's correctional facilities under a single account. A VRS provider should then be able to register a pool of telephone numbers under that account. It should also be able to register the main or administrative address for the correctional system in question, and that address would be considered to be the location of each kiosk used in that system."<sup>169</sup> Given the security measures available to inmate calling services providers and correctional facilities, we conclude that these changes to enterprise registration are unlikely to increase significantly the risk of waste, fraud, and abuse in TRS. We accordingly adopt rule language consistent with ZP's proposals.

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<sup>162</sup> Global Captions Aug. 25, 2022 *Ex Parte* at 2 (proposing alternative information to be collected from incarcerated persons for identity verification in the User Database).

<sup>163</sup> We do not require that the TRS provider receive such documentation directly from the issuing correctional official. As discussed *supra* para. 26, we require inmate calling service providers to assist TRS providers in collecting the required registration information and documentation from users and from the correctional facility.

<sup>164</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities et al.*, CG Docket No. 03-123 et al., Report and Order, Notice of Proposed Rulemaking, Order, and Declaratory Ruling, FCC 22-51, at 9, para. 15 (June 30, 2022) (noting that, while User Database registration is usually completed within a few hours of data submission, it sometimes takes longer if the administrator's initial attempt to verify a registrant's identity is unsuccessful, requiring the provider to obtain corrected information or additional documentation from the registrant).

<sup>165</sup> See *supra* para. 26.

<sup>166</sup> See ClearCaptions Comments at 3-4.

<sup>167</sup> See ZP Comments at 13 (stating that the text of the TRS registration rules does not "reflect the reality of how videophones are configured and utilized in correctional settings"); see also Hamilton Relay Comments at 2-4.

<sup>168</sup> Hamilton Relay Comments at 3.

<sup>169</sup> ZP Reply Comments at 9.

## C. Disability Access – Requirements for TRS Providers – Other Rules

### 1. Confidentiality Rule Clarifications

62. We conclude that no amendment to our TRS confidentiality rule is necessary to address the security concerns of correctional institutions. Section 64.604(a) of our rules states:

[e]xcept as authorized by section 705 of the Communications Act, 47 U.S.C. 605, CAs [(communications assistants)] are prohibited from disclosing the content of any relayed conversation regardless of content, and with a limited exception for STS CAs, from keeping records of the content of any conversation beyond the duration of a call, even if to do so would be inconsistent with state or local law.<sup>170</sup>

This rule, which applies to TRS providers and their CAs, does not impose obligations on other parties, such as inmate calling services providers, that are not eligible for TRS Fund compensation and are only providing a communications link to an authorized TRS provider.

63. Specifically, the rule does not prohibit an inmate calling services provider or correctional facility from monitoring and recording the transmissions sent and received between an incarcerated person and the TRS provider's CA, in the same way as they monitor and record other inmate calling services calls, provided that the TRS provider and CA are not conducting such monitoring and recording.<sup>171</sup> The comments confirm that it is common practice for inmate calling services providers to configure communications systems to allow monitoring or recording of calls, including TRS calls, by the inmate calling services provider or the correctional facility. For example, ClearCaptions acknowledges that "[while] Commission rules prohibit IP CTS providers from recording calls or retaining a transcript of the call after it has concluded . . . [f]or security reasons, [inmate calling services] providers often monitor and record calls."<sup>172</sup> Similarly, ZP states that it "does not interpret the current confidentiality rules to prohibit an [inmate calling services] provider or a correctional facility from monitoring the transmissions between an incarcerated person and the VRS providers' CA so long as the VRS provider and the CA are not directly engaging in such monitoring."<sup>173</sup>

### 2. Other TRS Rules

64. We also amend our rules to make clear that certain minimum TRS standards are not applicable to the incarceration setting.<sup>174</sup> Specifically, we amend our rules to provide that the types of

<sup>170</sup> 47 CFR § 64.604(a)(2).

<sup>171</sup> See *2017 VRS Order*, 32 FCC Rcd at 5895, para. 9 n.22 ("We confirm that the Commission's rule prohibiting CAs from 'disclosing the content of any relayed conversation' and 'from keeping records of the content of any conversation beyond the duration of the call' is not applicable to the call recording and monitoring often implemented as security measures associated with ICS because any recording performed in the completion of ICS is performed by the ICS provider, not the VRS provider.").

<sup>172</sup> ClearCaptions Comments at 4.

<sup>173</sup> ZP Comments at 14. Although NCIC attributes to Purple Communications the claim that correctional facilities are not permitted to record VRS sessions, NCIC Comments at 3, ZP (the successor entity to Purple Communications) replies that "NCIC's claim . . . reflects neither the state of the law nor current practice." ZP Reply Comments at 5.

<sup>174</sup> See *2021 ICS Notice*, 36 FCC Rcd at 9652, para. 287 (seeking comment on "whether any other modifications to our TRS rules are necessary to address the special circumstances that characterize inmate calling services," including, e.g., changes "in the TRS rules governing the types of calls TRS providers must handle").

calls, call durations, and calling features that TRS providers must offer incarcerated users are limited to those types of calls and call durations permitted for hearing people incarcerated in the correctional facility being served.<sup>175</sup> In addition, we do not require VRS providers to allow incarcerated users to choose their “default provider” or to place “dial-around” calls.<sup>176</sup>

65. We also note that, as incarceration facilities do not allow incarcerated people to place 911 calls, TRS providers will not need to handle 911 calls from such facilities.<sup>177</sup>

66. Finally, we remind TRS providers that our rules prohibiting the offering or provision of incentives to use TRS and other practices that encourage improper use of TRS are applicable in the incarceration context as well as elsewhere.<sup>178</sup>

#### **D. Adopting Rules for the Treatment of Balances in Inactive Accounts**

67. *Overview.* We find that all funds deposited into a debit-calling or prepaid-calling account and not spent on products or services shall remain the account holder’s property unless they are disposed of in accordance with either a controlling judicial or administrative mandate, or applicable state law concerning unclaimed property.<sup>179</sup> We also find that any action inconsistent with this finding (whether by a provider or an entity acting on a provider’s behalf) constitutes an unjust and unreasonable practice within the meaning of section 201(b) of the Act.<sup>180</sup> To protect account holders and incarcerated people pending further consideration of this matter based on the record to be developed in response to today’s Further Notice,<sup>181</sup> we prohibit providers of inmate calling services from seizing or otherwise disposing of unused funds in a debit-calling or prepaid-calling account, except through a full refund to the account holder, until at least 180 calendar days of continuous account inactivity has passed. At that point in time (or at the end of any longer, alternative time frame set by the provider or by state law), the provider must make reasonable efforts to refund the balance in the account to the account holder and, if those efforts fail, dispose of funds remaining in the inactive account in accordance with any controlling judicial or administrative mandate or applicable state law.

68. *Background.* Our rules contemplate two types of advance payments for inmate calling services and associated permissible ancillary service fees. These arrangements are chiefly distinguishable by the difference in the identity of the payor and the holder of the account. Under the first type of

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<sup>175</sup> See 47 CFR § 64.604(a)(3) (“Types of calls.”); GlobalVRS Comments at 3–4.

<sup>176</sup> See 47 CFR § 64.611(a); 2021 ICS Notice, 36 FCC Rcd at 9651, para. 285 (“Should incarcerated people be able to select the TRS provider they wish to use, or should the TRS provider be selected by the inmate calling services providers serving a facility . . . ?”).

<sup>177</sup> See 47 CFR § 9.14.

<sup>178</sup> See *id.* § 64.604(c)(8) (prohibiting “any form of direct or indirect incentives, financial or otherwise” to register for or use IP CTS or VRS); 47 CFR § 64.604(c)(13) (prohibiting VRS and IP CTS providers from engaging “in any practice that the provider has reason to know will cause or encourage” unauthorized use of the service, the making of TRS calls that would not otherwise be made, or the use of TRS by persons who do not need the service in order to communicate in a functionally equivalent manner).

<sup>179</sup> As explained below, this finding (and the associated rule we adopt today) is limited to accounts that can be used to pay for interstate or international inmate calling services.

<sup>180</sup> 47 U.S.C. § 201(b) (providing that “[a]ll charges, practices, classifications, and regulations for and in connection with [interstate or international] communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful”); see *GTL v. FCC*, 866 F.3d at 415 (recognizing that “[t]he Commission has plenary authority to regulate interstate rates under § 201(b)”).

<sup>181</sup> See *infra* Part IV.B.

advance payment—debit calling—the incarcerated person is the account holder, and the incarcerated person (or someone acting on their behalf) deposits funds into a provider account that can be used to pay for the incarcerated person’s calls and other expenses.<sup>182</sup> By contrast, the second type of advance payment—prepaid calling—involves a provider account in which calling expenses may be paid in advance, which is held and funded by a consumer other than the incarcerated person.<sup>183</sup> The purpose behind depositing funds under either arrangement is to pay for inmate calling and associated ancillary services.<sup>184</sup>

69. Commenters have long alleged that providers have implemented opaque debit-calling and prepaid-calling account balance policies that harm consumers.<sup>185</sup> Among other alleged abuses, commenters responding to the *2014 ICS Notice* contended that providers “are actually taking prepaid monies from prisoner accounts if for whatever reason the account is ‘inactive.’”<sup>186</sup> In response to these and other allegations of abusive ancillary charges the Commission prohibited providers of inmate calling services from charging consumers any ancillary service charges other than the five types specifically permitted by the Commission’s rules,<sup>187</sup> but did not directly address the treatment of unused funds remaining in consumer accounts after a period of inactivity. Consequently, the prohibitions on certain types of ancillary service charges did not eliminate all problems related to debit or prepaid account maintenance and closures.

70. In the *2021 ICS Notice*, we expressed concern regarding providers’ practices with respect to unused funds in inactive accounts and invited comment on whether we should require refunds after a certain period of inactivity and, if so, what timeframe would be appropriate.<sup>188</sup> The record shows that some providers treat a debit or prepaid account as “inactive” after a certain period of time,<sup>189</sup> then take

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<sup>182</sup> 47 CFR § 64.6000(g).

<sup>183</sup> *Id.* § 64.6000(p).

<sup>184</sup> *See id.* §§ 64.6000(g), 64.6000(p) (explaining that debit and prepaid calling arrangements can be used to pay for inmate calling services).

<sup>185</sup> *See, e.g., 2015 ICS Order*, 30 FCC Rcd at 12852, para. 175 (noting CenturyLink’s argument that “[p]roviders might impose high purchase minimums and complex refund policies to obtain captured funds”) (internal citation and quotation omitted); *id.* at 12851, para. 174 n.627 (citing comments from 51 former state attorneys general that urge the Commission to eliminate the practice of providers’ taking prepaid funds from inactive incarcerated person accounts) (internal citations omitted).

<sup>186</sup> *Id.* at 12851, para. 174 n.627 (citing 51 Former State Attorneys General Comments, WC Docket No. 12-375, at 2 (filed Jan. 9, 2015) (NSAG Comments)); *see also* Letter from Thomas M. Dethlefs, Associate Counsel, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 2-3 (filed Aug. 14, 2014) (proposing that the Commission “tightly control[]” policies like prepaid account refund requirements to avoid “gaming”). *See generally Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Further Notice of Proposed Rulemaking, 29 FCC Rcd 13170, 13216, para. 111 (2014) (*2014 ICS Notice*).

<sup>187</sup> *See* 47 CFR §§ 64.6000(a), 64.6020 (prohibiting providers from charging for any ancillary services, other than automated payment services, single-call and related services, live agent services, paper billing services, and third-party financial transactions services); *see also 2015 ICS Order*, 30 FCC Rcd at 12851, para. 174 (“Permitting any other ancillary service charges would promote unfair, unjust, and unreasonable rates to end users, and would thus be contrary to [the Commission’s] statutory mandate.”).

<sup>188</sup> *2021 ICS Notice*, 36 FCC Rcd at 9671, para. 337.

<sup>189</sup> The record shows that providers may declare an account “inactive” after as little as 90 days. Letter from Stephen Ra her, General Counsel, PPI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, Exh. 1, ICS Carrier Prepaid Fund Policies (filed May 6, 2022) (PPI May 6, 2022 *Ex Parte*) (asserting that GTL treats prepaid accounts as inactive after 90 days and that Pay Tel treats prepaid accounts as inactive after 180 days); *see also, e.g., Correct* (continued....)

possession of any funds remaining in the “inactive” account.<sup>190</sup> Thus, the account holder loses deposited funds merely by inaction. While the individual sums involved may be modest by some standards, they likely represent meaningful amounts to many of the individuals and families who are being unjustly deprived of these funds. The record also establishes that, collectively, the amounts involved can represent a significant windfall to the providers, which have strong incentives to retain these funds for themselves.<sup>191</sup>

71. *Discussion.* We find that all funds deposited into any account that can be used to pay for interstate or international inmate calling services remain the property of the account holder unless or until they are either: (a) used to pay for products or services purchased by the account holder or the incarcerated person for whose benefit the account was established; or (b) disposed of in accordance with a controlling judicial or administrative mandate or applicable state law, including, but not limited to, laws governing unclaimed property.<sup>192</sup> Any action by a provider, or other entity acting on a provider’s behalf,

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Solutions, LLC, Arizona Corporation Commission, Tariff No. 1, Page 17, § 3.4.1 (Oct. 23, 2017), [https://www.azcc.gov/docs/default-source/utilities-files/telephone/tariffs/correct-solutions-llc/correct-solutions-llc---institutional-telecommunications-tariff-no-1.pdf?sfvrsn=dfc3357\\_2](https://www.azcc.gov/docs/default-source/utilities-files/telephone/tariffs/correct-solutions-llc/correct-solutions-llc---institutional-telecommunications-tariff-no-1.pdf?sfvrsn=dfc3357_2) (explaining that any available balance in an intrastate prepaid account expires three months from the date the last call is made on the account and that no refunds will be made after account expiration); Inmate Calling Solutions, LLC, Puerto Rico Institutional Telecommunications Service, Tariff No. 1, Pages 6-7, § 2.4.1 (Jan. 28, 2017), [https://www.jrtp.pr.gov/download/tarifas\\_internet/Inmate%20Calling%20Solutions%20Tariff%20No-1.pdf](https://www.jrtp.pr.gov/download/tarifas_internet/Inmate%20Calling%20Solutions%20Tariff%20No-1.pdf) (explaining that debit and prepaid calling services expire six months from the date of purchase or sale and that no refunds will be issued after the expiration date); Network Communications International Corp., Public Utility Commission of Ohio, Tariff No. 4, 2nd Revised Page 21, § 3.6.1 (Apr. 20, 2018), <https://puco.ohio.gov/static/emplibrary/files/docketing/tariffs/Inter-exchange%20carrier/Network%20Communications%20International%20Corp%20db%20NCIC%20Inmate%20Communications/PUCO%204%20Institutional%20Telecommunications%20Services.pdf> (explaining that any remaining balance in an intrastate prepaid calling services account expires after six months of inactivity and that no refunds will be issued after the expiration date).

<sup>190</sup> See, e.g., PPI Reply at 29 (noting that the plaintiffs in a 2014 class action alleged that GTL had “seize[d] customer prepaid funds after 90 days of account inactivity”); PPI May 6, 2022 *Ex Parte* at 1-2 (alleging that inmate calling services “carriers hold substantial amounts of customer prepaid funds, which carriers are free to use as unrestricted working capital” and that “many carriers impose inactivity policies under which customer funds are forfeited to the carrier after a certain period of account inactivity”); see also *id.* Exh. 1, ICS Carrier Prepaid Fund Policies (concluding that ICSolutions, Prodigy, and Securus do not issue refunds, or in other words, that they seize funds after 180 days of inactivity); 2014 ICS Notice, 29 FCC Rcd at 13206, para. 89 (observing that, at that time, if a GTL “account remain[ed] inactive for 180 days, the remaining funds [became] the property of GTL”); Drew Kukorowski, Peter Wagner & Leah Sakala, *Prison Policy Initiative, Please Deposit All of Your Money* (May 8, 2013), <https://www.prisonpolicy.org/phones/pleasedeposit.html#sec5> (PPI Report) (addressing providers’ practice of seizing funds from inactive accounts, as evidenced by specific information from several providers’ policies, terms, and conditions related to their prepaid accounts); Third Amended Class Action Complaint at 2, 8, *Githieya et al. v. Global Tel\*Link Corp.*, No. 1:15-CV-986-AT (N.D. Ga. filed Apr. 3, 2015) (*GTL Class Action Complaint*) (civil class action suit concerning GTL’s collection of funds from prepaid account holders once a prepaid account was inactive for 90 days); Letter from Stephen Raher, General Counsel, PPI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, Exh. 1, Declaration of Ian Ratner (filed Aug. 31, 2022) (PPI Aug. 31, 2022 *Ex Parte*).

<sup>191</sup> See PPI Comments, WC Docket No. 12-375, at 15-16 n.27 (filed Nov. 4, 2021) (identifying the funds at issue as a material balance sheet item and noting GTL’s 2019 and Securus’s 2018 balance sheets, where the respective providers report tens of millions of unearned or deferred income from such sources); see also Third Amended Class Action Complaint at 13, *GTL Class Action Complaint* (discussing the same).

<sup>192</sup> Our actions extend to commingled accounts that can be used to pay for both interstate and international calling services and nonregulated services such as tablets and commissary services. As the Commission explained in the 2020 ICS Order on Remand, where the Commission has jurisdiction under section 201(b) of the Act to regulate the

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that is inconsistent with this finding constitutes an unjust and unreasonable practice that we prohibit pursuant to section 201(b) of the Act.<sup>193</sup> Sections 201 and 202 set out “broad standards of conduct” and the “Commission gives the standards meaning by defining practices that run afoul of carriers’ obligations, either by rulemaking or by case-by-case adjudication.”<sup>194</sup> Acting pursuant to section 201(b) of the Act, the Commission has generally found carrier practices unjust and unreasonable where necessary to protect competition and consumers against carrier practices for which there was either no cognizable justification for the action or where the public interest in banning the practice outweighed any countervailing policy concerns.<sup>195</sup> Here, as PPI points out, when providers take possession of unused funds in customers’

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rates, charges, and practices of interstate communications services, “the impossibility exception extends that authority to the intrastate portion of jurisdictionally mixed services ‘where it is impossible or impractical to separate the service’s intrastate from interstate components’ and state regulation of the intrastate component would interfere with valid federal rules applicable to the interstate component.” *2020 ICS Order on Remand*, 35 FCC Rcd at 8496, para. 31 (citing *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, 19 FCC Rcd 22404, 22413, para. 17 (2004)). In the *2020 ICS Order on Remand*, the Commission found that ancillary service charges “generally cannot be practically segregated between the interstate and intrastate jurisdiction” except in a limited number of cases where the ancillary service charge clearly applies to an intrastate-only call. *2020 ICS Order on Remand*, 35 FCC Rcd at 8495, para. 28. Applying the impossibility exception, the Commission concluded that providers generally may not impose any ancillary service charges other than those specified in the Commission’s rules and are generally prohibited from imposing charges in excess of the ancillary service fee caps. *Id.* Here, commingled accounts contain funds that can be used to pay for interstate and international calling, over which the Commission has jurisdiction, as well as intrastate calling and nonregulated services. We conclude that we cannot practically segregate the portion of the funds in those accounts that may be used to pay for interstate or international calling services from the portion that may be used to pay for intrastate calling services and nonregulated services. Because we cannot practically segregate funds in commingled accounts, we conclude that such accounts are subject to the actions we take today. By contrast, our rules do not prevent providers from creating separate accounts for use with nonregulated services.

<sup>193</sup> 47 U.S.C. § 201(b); *see also* Wright Petitioners Reply at 11 (arguing that providers’ “retention of funds that belong to incarcerated persons is an unjust or unreasonable practice” under section 201(b) of the Act) (citations omitted); PPI Reply at 29-30 (requesting that the Commission “address disposition of customer prepaid funds with the goal of ending unjust practices”); *2014 ICS Notice*, 29 FCC Rcd at 13206, para. 89 (“Separate charges for such ancillary services can often represent unreasonable practices and result in unfair compensation.”). The D.C. Circuit has explained that “the generality of [the] terms [just and reasonable] . . . opens a rather large area for the free play of a agency discretion, limited of course by the familiar ‘arbitrary’ and ‘capricious’ standard in the Administrative Procedure Act.” *Bell Atlantic Tel. Co. v. FCC*, 79 F.3d 1195, 1202 (D.C. Cir. 1996).

<sup>194</sup> *Personal Communications Industry Association’s Broadband Personal Communications Services Alliance’s Petition for Forbearance for Broadband Personal Communications Services et al.*, WT Docket No. 98-100 et al., Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 16857, 16865, para. 15 (1998).

<sup>195</sup> *See, e.g., Truth-In-Billing and Billing Format*, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, 7506, para. 24 (1999) (emphasizing that “a carrier’s provision of misleading or deceptive billing information is an unjust and unreasonable practice in violation of section 201(b) of the Act”); *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (“Cramming”) et al.*, CG Docket Nos. 11-116 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 4436, 4438, para. 4 (2012) (explaining that the Commission has found the practice of placing charges on consumer telephone bills for unauthorized services (i.e., “cramming”) is an unjust and unreasonable practice prohibited by section 201(b)); *Protecting Consumers from Unauthorized Carrier Charges and Related Unauthorized Charges*, CG Docket No. 17-169, Report and Order, 33 FCC Rcd 5773, 5779, para. 19 (2018) (explaining that the Commission “has found that misrepresentations made by interstate common carriers constitute unjust and unreasonable practices” under section 201(b) of the Act); *Updating the Inter-carrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Report and Order and Modification of Section 214

(continued...)

accounts, they “deprive[] consumers of money that is rightfully theirs.”<sup>196</sup> No commenter supports this practice, and we find no “countervailing policy concerns” or “cognizable justification” for this practice sufficient to outweigh the public interest in ensuring that consumers have access to funds that are rightfully theirs.<sup>197</sup> And these practices are even more clearly unjust and unreasonable if providers violate state laws when managing these accounts, which has been alleged in some instances.<sup>198</sup> For these reasons, we find the practice of taking possession of unused funds in customer accounts to be unjust and unreasonable under section 201(b) of the Act and prohibit it.

72. In the accompanying Further Notice,<sup>199</sup> we seek comment on how we can best prevent providers of inmate calling services from engaging in unjust and unreasonable practices related to unused funds in any customer account that can be used to pay for interstate or international calls. To protect account holders and incarcerated people from such practices, pending a full consideration of the record to be developed in response to the Further Notice, we prohibit providers of inmate calling services from seizing or otherwise disposing of funds deposited in a debit calling or prepaid calling account until at least 180 calendar days of continuous account inactivity has passed, except when funds are tendered for services rendered, disposed of in accordance with a controlling judicial or administrative mandate, or refunded to the customer. A controlling judicial or administrative mandate includes, in this context, any final (i.e., no longer appealable) court order requiring the incarcerated person to pay restitution, any fine imposed as part of a criminal sentence, and any fee imposed in connection with a criminal conviction. It also includes any final court or administrative agency order adjudicating a valid contract between the provider and the account holder, entered into prior to the release of this Order, that allows or requires that the provider act in a manner that would otherwise violate our rule on the disposition of funds in inactive accounts.

73. This period of inactivity (or dormancy) must be continuous, such that any of the following actions by an account holder or an incarcerated person will restart the 180-day clock: (i) depositing, crediting, or otherwise adding funds to an account; (ii) withdrawing, spending, debiting, transferring, or otherwise removing funds from an account; or (iii) expressing an interest in retaining, receiving, or transferring the funds in an account, or otherwise attempting to exert or exerting ownership or control over the account or the funds held within the account. To the extent an account holder requests a refund of their account balance at any time during the 180-day period, we expect the provider to

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Authorizations, 34 FCC Rcd 9035, 9073-74, para. 92 (2019) (concluding that the “practice of imposing tandem switching and tandem switched transport access charges on [interexchange carriers] for terminating access-stimulation traffic” is an unjust and unreasonable practice under section 201(b)).

<sup>196</sup> PPI Reply at 30; *see also* Wright Petitioners Reply at 11 (citing the *GTL Class Action Complaint* as providing an example of where GTL allegedly “took funds in prepaid customer accounts after a period of inactivity”). While “consumer” is defined in our rules as “the party paying a Provider of Inmate Calling Services,” 47 CFR § 64.6000(e), we use the term customer herein to denote an incarcerated person who uses the calling services offered to place a call, regardless of whether a separate party has actually paid for the service.

<sup>197</sup> Pay Tel suggests that high turnover in jails increases the likelihood that a pre-funded account will require a refund, leading to higher costs associated with administering such refunds. Nevertheless, Pay Tel “strongly believes that monies placed in inmate accounts that are unused should be refunded to the customer rather than absorbed by the [inmate calling services] provider as service ‘revenue.’” Pay Tel Comments at 9 n.16.

<sup>198</sup> *See, e.g.*, PPI Reply at 30 (contending that inmate calling services providers’ practice of “[s]eizing funds based on account inactivity has no economic justification and serves only to evade state unclaimed-property law”); Wright Petitioners Reply at 13 (“[A]t minimum, the Commission should make clear that providers must follow the relevant consumer protection laws regarding unclaimed property.”).

<sup>199</sup> *See infra* Part IV.B.

promptly issue such refund. We find that a 180-day term is a reasonable period of time that offers account holders and incarcerated persons an adequate window during which they may exert custody or control before they risk forfeiting their funds to the provider.<sup>200</sup> This window provides more time than the shortest “inactive” period of which we are aware,<sup>201</sup> reducing the risk that providers will seize funds inappropriately or prematurely. It is also similar to the time frame several inmate calling service providers currently appear to follow, suggesting that implementation of this time frame is unlikely to cause providers undue burdens.<sup>202</sup>

74. At the conclusion of the 180-day period (or at the end of any longer, alternative time frame set by the provider or by state law), the provider must make reasonable efforts to refund the balance in the account to the account holder and, if those efforts fail, the provider must dispose of that balance in accordance with applicable state consumer protection law, or if the state law is unclear, the Uniform Unclaimed Property Act.<sup>203</sup> Thus, 180 days of continuous inactivity, as defined above, is the minimum amount of time that must pass before providers may treat funds in an account used to pay for interstate or international inmate calling services as “abandoned.” Together, these steps will help ensure that account holders are not deprived of funds that are rightfully theirs and are granted the control over their funds as required by state law.<sup>204</sup> These measures will remain in place until the Commission acts on the related

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<sup>200</sup> The record shows that a 180-day period is a reasonable amount of time before deeming an account inactive. See PPI May 6, 2022 *Ex Parte* at 4 (providing that the Commission should establish an inactivity period of six months after which carriers should make efforts to provide refunds to prepaid account holders); *id.* at Exh. 1 (showing that five out of nine providers used 180-day or six-month inactivity periods); see also Pay Tel Comments Exh. 1 (explaining that Pay Tel may classify an account as inactive after no less than six months).

<sup>201</sup> See GTL d/b/a ViaPath Technologies, New York Public Service Commission, Tariff No. 1, Leaf 38, § 3.6 (May 15, 2022), <https://www.gtl.net/wp-content/uploads/2022/05/GTL-New-York-Tariff.pdf> (explaining that prepaid accounts are automatically closed after three months of inactivity and replacing GTL’s New York Public Service Commission Tariff No. 3 in its entirety).

<sup>202</sup> See Pay Tel Comments at 4 n.11, Exh. 1, Inactive Prepaid Account Policy, Parts B and D (“In the event that Customers’ Prepaid Account has no activity for a period of not less than three (3) months, the Company will inform the Customer of the account status and provide directions on how to access account information.”); *id.* Part D (“In the event that Customer’s Prepaid Account has been inactive for a period of not less than six (6) months [] the Company may classify the account as” dormant.). Certain providers find the burden so low that their policy is to hold consumer deposits indefinitely. See generally, e.g., NCIC Inmate Communications, <https://www.ncic.com/terms-and-conditions-ncic> (last visited Sept. 2, 2022) (applicable to a friends and family NCIC Phone Account; providing that account balances never expire, and NCIC will provide refunds by verbal request, less outstanding transactions, service charges and fees). No commenter suggests that a 180-day time frame and an obligation to process refunds would impose a significant burden on providers. Instead, the record now before us indicates that processing refunds after 180 days of inactivity will impose only a marginal burden on providers. See Wright Petitioners Reply at 12 & n.45 (citing NASUCA Comments, WC Docket No. 12-375, at 4 (filed Nov. 23, 2020)); PPI Aug. 31, 2022 *Ex Parte* at 3.

<sup>203</sup> Unif. Unclaimed Prop. Act, Revised, Articles 2–3 (Unif. L. Comm’n 2016). Several states have enacted the Uniform Unclaimed Property Act in full. See, e.g., Colo. Rev. Stat. §§ 38-13-100–307 (2020); D.C. Code §§ 41.151.01–153.07 (2021); Wright Petitioners Reply at 13 (commenting that the Commission “should make clear that providers must follow the relevant consumer protection laws regarding unclaimed property”).

<sup>204</sup> See, e.g., Unif. Unclaimed Prop. Act, Articles 2–3; see also *Generic Proceeding Considering the Promulgation of Telephone Rules Governing Inmate Phone Services*, Docket No. 15957, Further Order Adopting Revised Inmate Phone Service Rules, at 79, § 9.09 (Ala. Pub. Serv. Comm’n Dec. 9, 2014), <https://psc.alabama.gov/wp-content/uploads/2021/12/Dec-2014-Order-15957-updated-thru-6-12-2015.pdf>.

section of the Further Notice that accompanies this Order.<sup>205</sup> In the meantime, the actions we take today will help prevent providers from unjustly enriching themselves by taking possession of account holder funds or otherwise engaging in unjust or unreasonable practices in relation to those funds.

75. We decline to expand these prohibitions at this time because we are still developing the record. We need additional information before we can evaluate proposals to require providers to issue refunds “automatically.”<sup>206</sup> Likewise we will need to develop a more complete record before deciding whether to require providers to notify consumers before designating accounts as “inactive” or “dormant.”<sup>207</sup> To that end, we seek comment in the accompanying Further Notice on specific questions that are designed to develop a fuller record on these and other issues related to the disposition of unused funds in calling services accounts.

76. Finally, we reiterate that our ancillary service charges rules preclude providers from charging consumers for maintaining inactive debit-calling or prepaid-calling accounts that were established, in whole or in part, to pay for interstate or international inmate calling services and associated ancillary services.<sup>208</sup> Those rules also prohibit providers from charging consumers fees to close or obtain refunds from such calling services accounts.<sup>209</sup> To the extent any provider is imposing such charges, they may be subject to an enforcement action.

#### **E. Lowering the Single-Call Services and Third-Party Financial Transaction Fee Caps**

77. To reduce the economic burdens on incarcerated people and their loved ones from unnecessarily high ancillary service charges, we lower the maximum amount for third-party fees that inmate calling services providers may pass on to consumers for single-call services and third-party financial transactions.<sup>210</sup> In the *2021 ICS Order*, we set both of these caps at \$6.95 on an interim basis.<sup>211</sup>

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<sup>205</sup> We sought comment on whether we should adopt rules requiring refunds “after a certain period of inactivity” in the *2021 ICS Notice*. *2021 ICS Notice*, 36 FCC Rcd at 9671, para. 337. In light of our finding under section 201(b) of the Act, we find these standstill steps necessary to ensure that funds are not disbursed or otherwise irretrievably lost while we consider additional rules.

<sup>206</sup> See Wright Petitioners Reply at 12-13 (suggesting that, in the alternative, automatic account refunds should not be burdensome for providers and may be “seamless” when refunds are issued to stored credit or debit cards). Although the record suggests that issuing account refunds for consumers who paid by credit card would be relatively nonburdensome, it does not address in detail the burdens involved in issuing refunds under other circumstances. For example, the record does not illustrate the costs nor methods of providing refunds to a consumer who paid in cash or via a third party and cannot be located at a last known address.

<sup>207</sup> *Id.* at 12.

<sup>208</sup> 47 CFR § 64.6020. The record contains various examples of such charges. CPUC Comments, Appx. A Revised Staff Proposal, Attach. B Other Inmate Calling Service Fees and Charges (identifying other fees and charges observed by CPUC staff in inmate calling services contracts including “Prepaid refund processing fees,” “Western Union Debit Refund Processing Fee,” and ICS provider specific refund fees); PPI Report at 12 (discussing “monthly account maintenance fee[s]” that providers apply to any balance that lingers after a certain period of inactivity); Letter from Lee Petro, Counsel, NCIC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 6 (filed July 15, 2022) (NCIC July 15, 2022 *Ex Parte*) (reporting a \$7.50 processing fee for consumer refunds). Because such services are not among the five enumerated types of ancillary services for which providers are permitted to assess charges, any fees for such services in connection with accounts that can be used for interstate or international inmate calling services and associated ancillary services are barred under our rules.

<sup>209</sup> 47 CFR § 64.6020.

<sup>210</sup> For the purpose of this Report and Order and in the interest of brevity, we refer to single-call and all related services as “single call services.” Our use of this terminology is merely for convenience and does not reflect any

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We now adopt lower permanent caps limiting these fees to a maximum amount of \$3.00 when the fee is paid through an automated payment system and \$5.95 when the fee is paid through a live agent.<sup>212</sup> We find that this approach, which is unopposed in the record, will provide immediate financial relief to incarcerated people and their loved ones while we continue to consider further reforms to our ancillary service charges rules.

78. *Background.* In the *2021 ICS Order*, we capped, on an interim basis, the third-party fees inmate calling services providers may pass through to consumers for single-call services and third-party financial transactions at \$6.95 per transaction.<sup>213</sup> The Commission set these caps based on record evidence that this amount reflected the rate “one of the most prominent third-party money transfer services” charged “the largest inmate calling services provider,” reasoning that fixed interim caps were necessary to close loopholes in the Commission’s rules that had encouraged providers to seek out, as part of revenue-sharing schemes, artificially high rates for these services from third parties.<sup>214</sup> In adopting the interim caps, the Commission found that it lacked sufficient record evidence to adopt a proposal from NCIC to cap single-call services fees at \$3.00 for automated credit card payments, debit card payments, and bank payments (collectively, automated transactions) and \$5.95 for payments made through live agents, including payment through money transmittal services.<sup>215</sup>

79. In the *2021 ICS Notice*, however, we sought comment on NCIC’s proposal.<sup>216</sup> Two commenters, NCIC and PPI, filed in support of the proposal and no commenter opposed it.<sup>217</sup> Broadly, NCIC and PPI both encourage the Commission to curtail unreasonable practices stemming from third-

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changes to our rules other than those specifically set forth in the revised rules attached to this Report and Order. See Appx. B.

<sup>211</sup> *2021 ICS Order*, 36 FCC Rcd at 9612-16, paras. 209-16.

<sup>212</sup> 47 CFR § 64.6020(b)(2), (5).

<sup>213</sup> *2021 ICS Order*, 36 FCC Rcd at 9612-16, paras. 209-16.

<sup>214</sup> *Id.* at 9612-15, paras. 209, 212.

<sup>215</sup> *Id.* at 9613-14, para. 210. Following the adoption of the *2021 ICS Order*, NCIC filed a Petition for Reconsideration expounding upon its prior proposal and arguing that the Commission had erred in adopting the \$6.95 cap by “confus[ing] two distinct and separate transaction fees.” Petition for Reconsideration of NCIC, WC Docket No. 12-375, at 1 (filed Aug. 27, 2021) (NCIC Reconsideration Petition). NCIC explained that single-call services are “generally billed such that a provider may add up to a \$3.00 automated transaction fee for each call” and that third-party financial transaction fees “relate to cash and online deposits with Western Union, MoneyGram and other money transmittal services that had permitted certain [inmate calling services] providers to add ‘kickbacks’ on top of their normal transaction fees.” *Id.* at 2-3. NCIC further explained that the \$6.95 cap applicable to third-party fees “may offset all the efforts of the [Commission] in trying to reduce costs to inmates and their families” and encouraged the Commission to “use the ancillary caps of \$3.00 for automated transactions and \$5.95 for live agent fees, as the baseline for any further changes.” *Id.* at 4-5. Now that we have sufficient notice and a better record, we are revising our interim caps for single call services and third-party financial transaction fees, as NCIC urges. In view of this action, we dismiss as moot NCIC’s Petition for Reconsideration to the extent it relates to those interim caps. We decline to act on the remainder of that petition today as it is unrelated to the issues that are the focus of this Order.

<sup>216</sup> *2021 ICS Order*, 36 FCC Rcd at 9614, 9670, paras. 210, 332.

<sup>217</sup> PPI Comments at 11-12 (directly supporting NCIC’s proposal); NCIC Reply at 7-8 (referencing its positions in its Petition for Reconsideration and supporting lower caps for these charges); PPI Reply at 4-5 (reiterating support for this proposal but stressing that this measure should be interim only); *see also* NCIC Reconsideration Petition at 2-5.

party fees.<sup>218</sup> PPI recommends capping both single-call fees and third-party financial transaction fees at \$3.00 for automated payments and \$5.95 for payments through live operators, as proposed by NCIC.<sup>219</sup> PPI agrees with NCIC that the \$6.95 caps on third-party fees adopted in 2021 “simply encourage[s] some carriers to steer customers toward unnecessarily expensive calling options.”<sup>220</sup> Importantly, PPI stresses that lowering the caps for these pass-through charges will not prevent us from adopting different caps once we have completed our analysis of the providers’ responses to the Third Mandatory Data Collection.<sup>221</sup> For its part, NCIC explains that, in its experience, “the \$3.00 transaction fee is more than enough to cover all automated processing costs for charges up to \$100 and the \$5.95 fee should be sufficient for credit card transaction fees and live agent costs on transactions up to \$100.”<sup>222</sup> To the extent a \$6.95 fee is assessed by a third-party money transmittal service in conjunction with funding an inmate calling services account, the record confirms that such fees are charged directly by the money transmittal company to the consumer.<sup>223</sup>

80. *Discussion.* We reduce to \$3.00 the maximum amount that inmate calling services providers may pass through to a consumer for single-call services and any third-party financial transactions where the transaction involves the use of an automated payment system, and we reduce to \$5.95 the maximum amount where the transaction involves the use of a live agent.

81. When we adopted the interim \$6.95 caps in the *2021 ICS Order*, we admittedly lacked a sufficient record to fully evaluate NCIC’s proposal calling for lower rates.<sup>224</sup> At the time of the *2021 ICS Order*, we also lacked sufficient information about the relationship between fees for single-call services and third-party financial transactions and the automated payment and live agent fee caps. This led us to seek comment on that relationship in the *2021 ICS Notice*.<sup>225</sup> In response, commenters clarify that fees for single-call services and third-party financial transactions can be paid through an automated payment system (corresponding with the \$3.00 automated payment fee) or via a live agent (corresponding with the \$5.95 live agent fee).<sup>226</sup> Under the current definition, single calls are billed through a third party when the

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<sup>218</sup> PPI Comments at 6-7; NCIC Comments at 10.

<sup>219</sup> PPI Comments at 7-8 & n.16 (citing NCIC Petition for Reconsideration at 4-5); PPI Reply at 5.

<sup>220</sup> PPI Comments at 12.

<sup>221</sup> *Id.* at 8.

<sup>222</sup> NCIC Comments at 10-11.

<sup>223</sup> See *2021 ICS Notice*, 36 FCC Rcd at 9667-68, para. 327 (seeking comment on whether third parties such as Western Union or MoneyGram charge calling services customers directly or pass charges for using the related service through to providers); see also Letter from Stephen Raher, General Counsel, PPI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 2-3 (filed July 15, 2022) (PPI July 15, 2022 *Ex Parte*) (finding that the only third-party transaction cost incurred by inmate calling services providers is related to payment card processing, not money transmitter services).

<sup>224</sup> *2021 ICS Order*, 36 FCC Rcd at 9614, para. 210 (describing NCIC’s proposal and finding insufficient evidence to adopt this proposal).

<sup>225</sup> *Id.* at 9668-70, paras. 327-29 (seeking comment on various aspects of the relationship between these third-party fees and fixed ancillary service charges for the same payment methods).

<sup>226</sup> 47 CFR § 64.6020(b)(1), (3) (automated payment fees and live agent fee, respectively); PPI Reply at 5 (explaining that NCIC has proposed “subjecting single-call services to the same \$3 or \$5.95 cap (depending on payment channel) that currently applies to a automated and live-agent payments”).

called party does not have an account with the inmate calling service provider.<sup>227</sup> The record confirms that payment for these calls can be made through either an automated payment system or via a live agent.<sup>228</sup>

82. By contrast, third-party financial transaction fees are fees charged by third parties to inmate calling service providers to “transfer money or process financial transactions” to facilitate payments to consumers’ accounts with inmate calling service providers.<sup>229</sup> In those situations, account payments can be made through either an automated system or via a live agent that directs the consumer to a third party to process the account payment.<sup>230</sup> In both cases, payments are being made through one of two payment channels: through an automated payment system or via a live agent. These clarifications persuade us that the interim \$6.95 caps exceed the costs incurred for such transactions and do not appropriately reflect the type of payment channels actually used in connection with single-call services and third-party financial transactions. We thus reduce the maximum amount that providers can pass through to consumers. These measures will reduce inmate calling service providers’ ability to overcharge consumers for single-call services and third-party financial transactions, as we further weigh other proposals related to our ancillary service charges rules and analyze the providers’ responses to the Third Mandatory Data Collection.

83. One of our goals in replacing the pass-through caps for single-call services and third-party financial transaction fees with fixed caps in the *2021 ICS Order* was to curtail the incentives for providers to engage in revenue-sharing schemes, i.e., abusive provider practices that drive up prices for consumers.<sup>231</sup> Commenters now highlight that the \$6.95 cap we adopted in the *2021 ICS Order*, while reducing the financial incentives to engage in these schemes stemming from the prior absence of any limit on the third-party charges that could be passed through to consumers, may have actually incentivized providers to increase charges for consumers.<sup>232</sup> Given evidence in the record that both single-call services

<sup>227</sup> 47 CFR § 64.6000(a)(2). *But see* Letter from Stephen Raher, General Counsel, PPI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 1 (filed June 14, 2022) (suggesting that billing for single calls “is now typically done directly by the carrier without the involvement of a third party”). We seek comment on third-party involvement in single call scenarios in today’s Further Notice.

<sup>228</sup> *See* PPI Reply at 5 (referencing an automated or live agent “payment channel”); PPI July 15, 2022 *Ex Parte* at 2 (explaining that the only way someone receiving a first-time call from prison or jail “can accept and pay for the call is with a payment card”); NCIC July 15, 2022 *Ex Parte* at 2 (providing a script from a test call in which the caller did not have an account with the inmate calling services provider and was invited to pay for the call using a payment card); Letter from Michael Pryor, Counsel, Securus, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 1 (filed June 21, 2022) (Securus June 21, 2022 *Ex Parte*) (explaining that Securus “no longer utilizes live agents to facilitate transactions” and suggesting that other providers may use live agents to process transactions, including those related to single calls); *see also* NCIC Comments, WC Docket No. 12-375, at 3 (filed Nov. 24, 2020) (suggesting that the Commission limit the transaction fee to either the automated payment fee or the live agent fee “as applicable”).

<sup>229</sup> *2015 ICS Order*, 30 FCC Rcd at 12850-51, paras. 170-71.

<sup>230</sup> PPI July 15, 2022 *Ex Parte* at 1-2 (explaining that consumers can use a payment card “either to pay for a specific call on a one-off basis or to fund a prepaid account”); *see also 2015 ICS Order*, 30 FCC Rcd at 12849, para. 168 (explaining that the live agent fee “may only be charged once per interaction with a live agent, regardless of the number of tasks completed in the call”); *2021 ICS Notice*, 35 FCC Rcd at 9669, para. 329; Securus June 21, 2022 *Ex Parte* at 1 (suggesting that live agents are used to “facilitate transactions” despite not offering the service any longer).

<sup>231</sup> *2021 ICS Order*, 36 FCC Rcd at 9613, para. 209 & n.650.

<sup>232</sup> *See* NCIC Reconsideration Petition at 4 (explaining that by “raising the cap on third-party transaction fees to \$6.95, the Commission motivated inmate calling services providers “to increase the amount charged to [inmate

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and third-party financial transactions involve payment through an automated payment system or a live agent, we find that, pending our analysis of the data submitted in response to the Third Mandatory Data Collection, the amounts providers may charge for those services may not exceed the amounts providers are already permitted to charge for automated payment services (capped at \$3.00) and live agent services (capped at \$5.95). We decline suggestions from commenters arguing that we defer any action on our ancillary service charges rules to a later date or that we undertake more sweeping reforms at this time.<sup>233</sup>

#### **F. Amending the Definitions of “Jail” and “Prison”**

84. We next amend the definitions of “Jail” and “Prison” in sections 64.6000(m) and 64.6000(r) of our rules to conform those definitions with the Commission’s intent to include every type of facility where individuals can be incarcerated or detained, as explained in the *2015 ICS Order*.<sup>234</sup> In the *2021 ICS Notice*, the Commission proposed to amend its definition of “Jail” by explicitly including facilities of ICE and the BOP, whether operated by the law enforcement agency or pursuant to a

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calling services] consumers for certain transactions and to drive users to using the more expensive option by making it more convenient”). Other commenters argue that this \$6.95 cap incentivized providers to rely on third parties for processing such payments more frequently, pursuant to revenue-sharing agreements. *See* Letter from Tim McAteer, President, Inmate Calling Solutions, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 5 (filed May 12, 2021) (arguing that the disparity between fixed ancillary service charge cap amounts and third-party pass through fees incentivizes providers to seek out revenue-sharing schemes). Reducing the \$6.95 cap to \$5.95 will reduce these incentives.

<sup>233</sup> On the one hand, some commenters suggest that the Commission wait before taking any actions regarding ancillary service charges to observe how the market reacts to changes from our prior actions in this proceeding. GTL Comments at 6-7 (arguing that “[i]t will take time for the ICS market to adjust and stabilize” due to the recently adopted changes to our rules and that “a period of market observation is essential before the adoption of permanent rate caps or changes to ancillary service charges”); Praeses, LLC, Comments at 4-7 (arguing that ICS providers have not had enough time to “fully adjust their operations and cost structures” as a result of the adopted changes to our rules); GTL Reply at 9-10; Pay Tel Reply at 3-4 (arguing that a pause would “ensure the next round of data collected is accurate and reflective of the new status quo in the ICS marketplace”). The record offers no reason why the market should require time beyond today to stabilize, particularly where providers have previously found 90 days to be a sufficient transition period (and when our revised rules have been in effect for even longer). *See, e.g., 2021 ICS Order*, 36 FCC Rcd at 9623, para. 230 & n.713 (finding that the 90-day timeframe has been proposed and implemented in this proceeding with no record “that providers experienced difficulties” implementing other changes) (internal citations omitted). We find no reason for such delay. Nor are we required to await perfect data before acting. *Id.* at 9543-44, para. 59 & n.179 (citing *Am. Pub. Gas Ass’n v. Federal Power Comm’n*, 567 F.2d 1016, 1046 (D.C. Cir. 1977)); *see also* NCIC Reply at 9 (“Rather than acceding to GTL’s suggestion that the [Commission] pause for ‘a period of market observation,’ it is clear that the [Commission] should take steps now to eliminate abuse of ancillary service fees that result in higher costs to [inmate calling services] consumers.”); PPI Reply at 3 (urging the Commission to take steps immediately).

On the other hand, other commenters encourage us to lower the \$3.00 cap on automated payment fees, to prohibit single call fees altogether, and to require that each newly incarcerated person receive two free calls. NASUCA Comments at 2 (urging the Commission to investigate whether \$3.00 is justified for a single call paid by credit card when no third-party money transmitter service is used); NCIC Comments at 12-13 (suggesting that ancillary charges for single-call services should be prohibited or limited to a marginal fee to cover credit card transactions and proposing that each newly incarcerated person receive two mandatory free calls); PPI Comments at 6-10 (proposing the Commission prohibit revenue sharing practices, to be enforced by requiring providers to submit all contracts related to payment processing and subpoenaing relevant contracts and accounting documents from money transmitter services); PPI Reply at 5 (supporting NCIC’s suggestion that we proceed towards prohibiting transaction fees for single-calls).

<sup>234</sup> 47 CFR § 64.6000(m), (r); *2015 ICS Order*, 30 FCC Rcd at 12783, para. 39.



contract.<sup>235</sup> The Commission also proposed to add the term “juvenile detention facilities” and “secure mental health facilities” to the definition of “Jail” and asked whether it should make other changes to its definitions of “Jail” or “Prison.”<sup>236</sup> We did not receive any comments or opposition in response to these questions. Therefore, we adopt the proposed changes to ensure that our inmate calling services rules apply to all incarceration facilities.<sup>237</sup>

85. We revise the definition of “Jail” to explicitly include detention facilities operated by ICE. In the *2015 ICS Order*, the Commission explained that the term “Jail” was meant to include, among other facilities, “facilities used to detain individuals pursuant to a contract with [ICE] and facilities operated by ICE.”<sup>238</sup> The relevant part of the codified definition, however, encompasses only “facilities used to detain individuals *pursuant to a contract*” with ICE, failing to specifically include facilities operated by the agency, creating a gap in our rules.<sup>239</sup> Encompassing facilities operated by ICE aligns the definition with the Commission’s intended meaning and ensures that our inmate calling services rules protect individuals detained in all ICE facilities regardless of how they are operated.

86. Similarly, we revise the definition of “Jail” to explicitly include detention facilities operated by the BOP or pursuant to a contract with the BOP. As the Commission explained in the *2015 ICS Order*, the term “Jail” was meant to include facilities operated by federal law enforcement agencies that are used primarily to hold individuals who are “awaiting adjudication of criminal charges,” are “committed to confinement to sentences of one year or less,” or are “post-conviction and awaiting transfer to another facility.”<sup>240</sup> The codified definition, however, fails to mention the BOP,<sup>241</sup> thus creating potential confusion as to whether facilities of the type described in the definition should be classified as “Jails” if they are operated by the BOP or pursuant to contracts with the BOP, given the use of the word “Prison” in the name of the facility. To eliminate this potential confusion, we amend our definition of “Jail” to explicitly include facilities operated by the BOP, or pursuant to a contract with the BOP, that otherwise meets the existing definition of “Jail.”<sup>242</sup>

87. We also revise our definition of “Jail” to explicitly include all “juvenile detention facilities” and “secure mental health facilities” that operate outside of facilities that are otherwise classified as prisons or jails under our rules.<sup>243</sup> In the *2015 ICS Order*, the Commission found that providing inmate calling services in juvenile detention facilities and secure mental health facilities was “more akin to providing service to jail facilities” and instructed that “[t]o the extent that juvenile detention facilities and secure mental health facilities operate outside of jail or prison institutions” they would be subject to the rate caps applicable to jails.<sup>244</sup> The codified definition of “Jail,” however, does not mention either “juvenile detention facilities” or “secure mental health facilities.”<sup>245</sup> Our revised definition of

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<sup>235</sup> *2021 ICS Order*, 36 FCCRcd at 9686, Appx. B at para. 2 (proposed amendment to 47 CFR § 64.6000(m)(3)).

<sup>236</sup> *Id.* at 9674-75, 9686, paras. 347-38, Appx. B at para. 2 (proposed amendment to 47 CFR § 64.6000(m)(3)).

<sup>237</sup> *2015 ICS Order*, 30 FCCRcd at 12783, 12785, paras. 39, 43.

<sup>238</sup> *Id.* at 12783, para. 39.

<sup>239</sup> 47 CFR § 64.6000(m)(3) (emphasis added).

<sup>240</sup> *2015 ICS Order*, 30 FCCRcd at 12783, para. 39.

<sup>241</sup> See 47 CFR § 64.6000(m)(3).

<sup>242</sup> Appx. B at para. 3 (revising 47 CFR § 64.6000(m)(3)); *2015 ICS Order*, 30 FCCRcd at 12783, para. 39.

<sup>243</sup> Appx. B at para. 3 (revising 47 CFR § 64.6000(m)(3)).

<sup>244</sup> *2015 ICS Order*, 30 FCCRcd at 12785, para. 43.

<sup>245</sup> 47 CFR § 64.6000(m)(3).

“Jail” explicitly lists all such facilities, thus ensuring that individuals held in those facilities will be covered by our rules, as the Commission intended.

88. Finally, in the *2021 ICS Notice*, we sought comment on whether there are types of correctional facilities, in addition to those discussed above, “that should be explicitly added to our codified definitions of ‘Jail’ or ‘Prison.’”<sup>246</sup> We now amend the definition of “Prison” in section 64.6000(r) of our rules to avoid potential confusion. In the *2015 ICS Order*, the Commission made clear that the term “Prison” should be restricted to facilities in which the majority of incarcerated people “are sentenced to terms in excess of one year.”<sup>247</sup> This criterion is reflected in the first sentence of section 64.6000(r).<sup>248</sup> The second sentence of that rule states, however, that the term “Prison” includes certain facilities “in which the majority of” incarcerated people “are post-conviction *or* are committed to confinement for sentences of longer than one year.”<sup>249</sup> We replace the disjunctive (“or”) with the conjunctive (“and”) in this sentence to make clear that a facility that otherwise meets the definition of “Jail” should be classified as a “Prison” only if the majority of its incarcerated people are both post-conviction *and* confined for more than one year. This change ensures that the definition conforms with the Commission’s intent when it first adopted the rule.<sup>250</sup>

#### IV. FURTHER NOTICE OF PROPOSED RULEMAKING

##### A. Disability Access

##### 1. Enterprise Registration for IP CTS

89. We seek comment on whether to adopt a form of enterprise registration for IP CTS, limited to the correctional context, as advocated by some commenters to simplify the commencement of service to eligible incarcerated users.<sup>251</sup> Do the modifications made in the accompanying Order to the Commission’s registration requirements sufficiently address any registration-related barriers to the use of IP CTS in the incarceration context? Are there significant difficulties with individual registration that an enterprise registration option could overcome? If needed, how could an enterprise registration option be crafted to protect against waste, fraud, and abuse?<sup>252</sup> What are the costs and benefits of allowing enterprise registration for IP CTS in the incarceration context?

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<sup>246</sup> *2021 ICS Notice*, 36 FCCRcd at 9675, para. 348.

<sup>247</sup> *2015 ICS Order*, 30 FCCRcd at 12783, para. 39.

<sup>248</sup> 47 CFR § 64.6000(r) (stating that “Prison means a facility operated by a territorial, state, or federal agency that is used primarily to confine individuals convicted of felonies and sentenced to terms in excess of one year”).

<sup>249</sup> *Id.* (emphasis added).

<sup>250</sup> Because section 64.6020 of our rules, 47 CFR § 64.6020, addresses five different types of ancillary service charges, we also amend the heading of that rule to read “Ancillary Service Charges,” rather than “Ancillary Service Charge.” We find good cause to make this revision without notice and comment because it is editorial and non-substantive, and therefore notice and comment is unnecessary. See 5 U.S.C. § 553(b)(3)(B) (specifying that notice and comment are not required “when the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest”).

<sup>251</sup> See Accessibility Coalition Reply Comments at 14-16.

<sup>252</sup> See Tidal Wave Comments at 5.

## 2. Expanding the Scope of Inmate Calling Services Providers' TRS Access Obligations

90. We seek further comment on extending inmate calling services providers' TRS access obligations to require that access to advanced forms of TRS—VRS, IP Relay, and IP CTS (or, in the absence of broadband, CTS)—be provided in jurisdictions with an average daily population of less than 50 incarcerated persons. As we explain in the Order, to ensure that TRS is available to incarcerated persons to the fullest extent possible,<sup>253</sup> we believe the TRS access requirements of inmate calling services providers should be at least coextensive with those of correctional authorities—which are not subject to any population size limitation.<sup>254</sup>

91. In the Order, we set an average daily population of 50 as an initial threshold for the obligation to provide access to additional forms of TRS. Have video visitation systems continued to proliferate, or have other factors changed, such that broadband connections and video devices are now routinely provided to a broader range of city or county facilities?

92. What additional factors may determine the feasibility of providing access to Internet-based forms of TRS? What specific additional costs, for devices or other resources, are incurred by correctional authorities in jurisdictions of this size in making Internet-based TRS available? We seek additional information, for example, on the cost of tablets and other user devices suitable for allowing incarcerated individuals to access Internet-based forms of TRS. What is the range of monthly inmate calling services revenue typically generated by city or county jails housing a daily population of fewer than 50 incarcerated people?

93. Is an average daily population of 50 the appropriate threshold for requiring access to all forms of TRS and point-to-point video service, or is a different threshold warranted? If we adopt a lower threshold, how long a period should we allow for providers to comply? Should we require that an inmate calling services provider serving a smaller jurisdiction ensure that, to the maximum extent possible, individuals with disabilities have access to appropriate forms of TRS?<sup>255</sup>

### B. Refining the Rules for the Treatment of Balances in Inactive Accounts

94. We seek comment on whether we should refine the rules we adopt today concerning the treatment of unused funds in accounts that consumers use to pay for interstate and international inmate calling services and related ancillary services charges, including on whether we should take any further steps to protect consumers from unjust and unreasonable practices regarding those funds. In the Order, we exercise our authority under section 201(b) of the Act and prohibit providers of inmate calling services from seizing or otherwise disposing of unused funds in any account used to pay for interstate or international inmate calling services—except through a full refund to the account holder—until the account has been inactive for at least 180 consecutive days.<sup>256</sup> At that point (or at the end of any longer,

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<sup>253</sup> See 47 U.S.C. § 225(b)(1) (TRS to be made available “to the extent possible”).

<sup>254</sup> As noted above, to justify less than full compliance with the Department of Justice’s regulations implementing Title II of the ADA, a correctional authority “has the burden of proving that compliance with this subpart” would “result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.” 28 CFR § 35.164.

<sup>255</sup> Cf. 28 CFR § 35.164 (“If an action required to comply with this subpart would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity.”).

<sup>256</sup> 47 U.S.C. § 201(b); see *supra* Part III.D.

alternative time frame set by state law or established by the provider), the provider must make reasonable efforts to refund the balance in the account to the account holder and, if those efforts fail, dispose of any remaining funds in accordance with applicable state law.<sup>257</sup> Should we refine these rules to increase consumer protection? Why or why not? Should we create exceptions to these rules? If so, what exceptions should we allow? Are there additional requirements we should adopt concerning the disposition of balances in inactive accounts? If so, what additional requirements do commenters recommend and why? Are there situations where refunds are impractical, impossible, or otherwise unduly burdensome, and, if so, what rules should apply in those situations?

95. *Inactive Period.* In the Order, we adopt a rule requiring 180 days to pass before a provider may determine that an account has become inactive. Is this an appropriate time frame? Why or why not? We also require that the 180-day inactivity period be continuous, with any of the following actions by a consumer or an incarcerated person being sufficient to demonstrate activity: (i) depositing, crediting, or otherwise adding funds to an account; (ii) withdrawing, spending, debiting, transferring, or otherwise removing funds from an account; or (iii) expressing an interest in retaining, receiving, or transferring the funds in an account, or otherwise attempting to exert or exerting ownership or control over the account or the funds held within the account.<sup>258</sup> We seek comment on what actions should constitute expressing an interest in the deposited funds. Similarly, how would an account holder or incarcerated person exert control over the account? Are there other events that we have not already identified that should demonstrate activity and cause the 180-day clock to restart? If so, what are they?

96. *Timing of Refunds.* Our rules require that a provider must make reasonable efforts to refund the balance in the account to the account holder. Should we require providers to issue refunds within a specified period of time after an account becomes inactive? Should we consider a different period of time after some other event, such as release from incarceration? If so, what period would give providers sufficient time to process the refunds while ensuring that consumers receive their money in a timely manner? If the account holder requests a refund before the account becomes inactive, what is a reasonable time frame in which to issue such refund?<sup>259</sup> Do providers need time to process a refund request after they receive the request? If so, what is that time frame? Do providers have the ability to issue a refund immediately upon request in some circumstances? If so, what would those circumstances be? Are there situations that should lead providers to immediately refund remaining amounts to account holders, even if the account has not been inactive for 180 days? If so, what are they? In particular, should we require automatic refunds when the incarcerated person is released or transferred to a facility served by another provider? If so, should the situation vary if the account is held by a consumer other than the incarcerated person and can still be used by another incarcerated person? If not, what steps, if any, should we take to ensure that the account holder has the opportunity to make an informed choice regarding whether to receive a refund?

97. Are there circumstances in which an automatic refund would be impracticable or inappropriate? For example, are there situations where a provider may not be aware that an incarcerated person has been released or transferred? If so, how can we ensure that account holders have an opportunity to request refunds in those situations, or in other situations where an automatic refund is not feasible or sensible? Should the account holder be required to request a refund in writing, either by mail

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<sup>257</sup> See *supra* Part III.D.

<sup>258</sup> *Id.*

<sup>259</sup> *Id.* (stating that we expect the provider to promptly issue a refund if a consumer requests a refund of their account balance at any time during the 180-day inactivity period).

or email? Or would a telephonic request or some other type of request be preferable? What information would a provider need in order to verify the legitimacy of a refund request?

98. *Release and Transfer Processes.* We seek comment on the release and transfer processes to better understand the need for rules addressing those areas. Do providers receive notice when an incarcerated person is released or transferred and, if so, does the notice include the incarcerated person's future contact information? If not, what steps would be needed to ensure that providers receive all needed information about a release or transfer on a timely basis in order to efficiently refund money?

99. *Contact Information.* We next invite comment on whether providers routinely receive the type of contact information they would need to notify account holders about inactive accounts and to refund unused balances to account holders. Should we require providers to collect such information? What information is necessary to ensure that a notification actually reaches an account holder? Are the account holder's email address, physical mail address, or phone number each sufficient? Does the necessary information vary depending on whether the account holder is an incarcerated person who at some point will be released from incarceration, as opposed to a person who maintains an account for the incarcerated person's use? If so, how does the necessary information differ in those circumstances, and what information would be necessary in the different circumstances?

100. *Notice to Account Holders.* We seek comment on the need for rules addressing the manner in which providers notify consumers regarding matters affecting their accounts, as well as the content of any such notices. Should we require providers to notify account holders regarding their inactive account and refund policies, and the status of their accounts, including when the accounts have been deemed inactive? If so, when and how should those notices be provided, and what information beyond the account balance and the account holder's right to a refund should we require to be disclosed? What sort of notice, if any, should we require providers to give account holders in situations where refunds are not automatic or where attempts to provide a refund have been ineffective? Should these notices include an explanation of any state unclaimed property laws, or other state laws, that may apply to the funds in their accounts? Should we require providers to notify the incarcerated person in addition to the account holder? Should we require providers to send additional notices to account holders who do not respond to the initial notices? Should we specify the timing, content, and mode of dissemination of any additional notices? How should the subsequent notices inform the account holder that if they do not respond, their account may be subject to state unclaimed property law, or such other law affecting the account holder's rights to the balance?

101. *Refund Mechanisms.* We seek comment on the different methods providers can use to refund unused funds and on the relative benefits and burdens of each method. For instance, are providers able to refund payments made by credit card or from a bank account directly to the card or account? What other refund methods are available to the providers? When the account holder is an incarcerated person who has been released, how should the provider send a refund? Should it send a prepaid debit card or check to the person's forwarding address? What requirements should we adopt to ensure providers quickly send refunds to recently released account holders? When the account holder is not the incarcerated person, would mailing a prepaid debit card or check to the account holder's billing address suffice? Why or why not? Which refund mechanisms are the most effective in returning funds to account holders while also minimizing the burdens on providers?

102. *Controlling Judicial or Administrative Mandate.* Our rule regarding the disposition of funds in inactive accounts does not apply where a provider is acting in accordance with a controlling judicial or administrative mandate. We propose to retain this exception. We also propose to continue to treat as a controlling judicial mandate any court order requiring the incarcerated person to pay restitution, any fine imposed as part of a criminal sentence, and any fee imposed in connection with a criminal conviction to the extent these payments are made from the same account used to pay for calling services. We invite comment on these proposals. Do they capture the full universe of judicial actions that a court

may impose on an incarcerated person? If not, what language should we incorporate into our rules to capture that universe?

103. We also invite comment on whether we should consider a controlling judicial or administrative mandate to include a court or administrative agency order allowing or requiring the provider to act in a manner that would otherwise violate our rules regarding the disposition of funds in inactive accounts. Our rule does not apply to the extent a court or administrative agency determines that a contract the provider and the account holder entered into prior to the release of today's Order allows or requires a different outcome. Is this the correct approach? Or should we instead preclude enforcement of any such contract as contrary to section 201(b)'s prohibition against unjust and unreasonable practices in connection with the provision of inmate calling services? Conversely, should we allow account holders to knowingly and voluntarily waive any protections our rules provide regarding the disposition of funds in inactive accounts? If so, what notice and record keeping requirements, if any, should we adopt to ensure that we will be able to determine whether account holders are fully informed of, and voluntarily waive, their rights under our rules?

104. *State Laws.* We finally seek comment on how applicable state laws, including state unclaimed property laws, should affect our rules regarding the treatment of balances in inactive inmate calling services accounts. Are there any elements of state unclaimed property law which would be helpful to incorporate into our rules? For example, should we require providers to follow the Uniform Unclaimed Property Act in states having no statutes regulating the disposition of unclaimed balances in consumer accounts?<sup>260</sup> Are there any state laws that provide inmate calling services-specific exceptions to otherwise applicable state unclaimed property? If so, what states have such laws and what do those laws say? Are there other types of consumer protection laws regarding the distribution or retention of balances in inactive accounts that we should consider? If so, commenters should cite these other types of laws and explain their applicability in the inmate calling services context.

### C. Reforming the Consumer Disclosure Requirements

105. We seek comment on how we might improve our consumer disclosure rules, including extending the scope of those rules to reach more inmate calling services consumers. Specifically, we propose to build on prior reforms by requiring inmate calling services providers to make the same required disclosures of information available to all consumers, regardless of whether they receive an actual bill from a provider.<sup>261</sup> We seek comment on a number of questions regarding how providers presently disseminate information regarding inmate calling services accounts to consumers and on whether we should make additional changes to our consumer disclosure rules. The reforms we contemplate will help ensure that incarcerated people and those they call will receive clear and transparent information about providers' charges and fees that inmate calling service consumers need to make informed choices regarding their calling services options.

106. *Background.* Transparency regarding the charges and fees for inmate calling services and associated ancillary services is critical because it ensures that incarcerated persons and their families understand the prices they are, or will be, charged for the services they use, enabling them to make

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<sup>260</sup> Unif. Unclaimed Property Act, Revised, Articles 2–3 (Unif. L. Comm'n 2016).

<sup>261</sup> See 47 CFR § 64.6110(b) (requiring providers to “clearly label” any facility-related component of their inmate calling services rates as separate line items on “[c]onsumer bills” and setting standards for when that component may be considered clearly labeled); *id.* § 64.6110(c) (requiring providers to “clearly label” all charges for international calls as separate line items on “[c]onsumer bills” and setting standards for when such charges may be considered clearly labeled).

informed decisions when purchasing those services.<sup>262</sup> Our inmate calling services rules require a variety of consumer disclosures designed to improve transparency.<sup>263</sup> The Commission first adopted inmate calling services consumer disclosure rules in 1998, requiring providers to make certain oral disclosures prior to the completion of interstate inmate calling services calls.<sup>264</sup> Since that time, the Commission has expanded its inmate calling services rules, including the scope of the required consumer disclosures.<sup>265</sup> In 2015, the Commission required calling services providers to “clearly, accurately, and conspicuously disclose” their rates and ancillary service charges to consumers “on their websites or in another reasonable manner readily available to consumers.”<sup>266</sup>

107. As described above, in our *2021 ICS Order*, we imposed two additional consumer disclosure requirements pertaining to consumer bills: (i) requiring providers to “clearly label” any site commission fees they charged consumers as “separate line item[s] on [c]onsumer bills” and set standards for determining when the fees would be considered “clearly label[ed],”<sup>267</sup> and (ii) requiring providers to “clearly label” all charges for international calls, as “separate line item[s] on [c]onsumer bills.”<sup>268</sup> We found these two requirements—the consumer billing rules—necessary to provide consumers with the ability to “evaluate their bills and monitor whether they are receiving the protections of the Commission rate caps to which they are entitled.”<sup>269</sup> Since we adopted these additional requirements, we have learned that consumers of inmate calling services often do not receive “bills” from their provider given the nature of their calling arrangements.<sup>270</sup> As one party points out, “[a]n incarcerated individual using a debit or commissary account to pay for [inmate calling services] does not receive a ‘bill’ from an [inmate calling services] provider.”<sup>271</sup> Indeed, many such consumers may not receive a statement of any kind after having paid for their calls. As a result, the information we deem important regarding separate site commission rate components and international call charges may not be received by many calling service consumers.

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<sup>262</sup> See *2015 ICS Order*, 30 FCC Rcd at 12895-96, para. 278 (reasoning that “transparency in rates, terms, and fees will facilitate compliance with . . . reforms and ensure that consumers are informed of their choices” and finding that this rule “provide[s] key consumer benefits with minimal burden on [inmate calling services] providers”).

<sup>263</sup> See, e.g., 47 CFR §§ 42.10, 64.710, 64.6110.

<sup>264</sup> *Billed Party Preference for InterLATA0+ Calls*, CC Docket No. 92-77, Second Report and Order and Order on Reconsideration, 13 FCC Rcd 6122 (1998) (*Billed Party Preference Order*); 47 CFR § 64.710(a); see 47 U.S.C. § 226. The Commission also required that, prior to connecting a call, providers of “inmate operator services” are required to disclose orally the total cost of the call, including any surcharges or premise-imposed fees that may apply to the call, as well as methods by which to make complaints concerning the charges or collection practices upon request. *Billed Party Preference Order*, 13 FCC Rcd at 6123-24, 6140-41, paras. 1, 28, 32; *id.* at 6170, Appx. A (adopting 47 CFR § 64.710); see also 47 CFR § 64.710(b)(3) (defining “inmate operator services”).

<sup>265</sup> See generally 47 CFR § 64.6110 (identifying many, but not all, of the consumer disclosures currently required).

<sup>266</sup> *2015 ICS Order*, 30 FCC Rcd at 12895-96, para. 278; 47 CFR § 64.6110(a).

<sup>267</sup> 47 CFR § 64.6110(b); see *2021 ICS Order*, 36 FCC Rcd at 9564, para. 104.

<sup>268</sup> 47 CFR § 64.6110(c).

<sup>269</sup> *2021 ICS Order*, 36 FCC Rcd at 9589, para. 160.

<sup>270</sup> GTL Comments, WC Docket No. 12-375, at 5-6 n.35 (filed Oct. 25, 2021) (“[M]ost consumers utilizing [inmate calling services] do not receive ‘bills’ in the traditional sense.”) (GTL Oct. 25, 2021 Comments); Pay Tel Comments, WC Docket No. 12-375, at 3 (filed Oct. 25, 2021) (Pay Tel Oct. 25, 2021 Comments) (“Pay Tel only offers international service through debit calling, where the inmate is not rendered a traditional bill due to the requirements of the confinement facility and nature of the service.”).

<sup>271</sup> GTL Oct. 25, 2021 Comments at 7 n.35.

108. *Disclosures for Consumers Who Do Not Receive Bills.* We propose to expand our consumer disclosure rules to cover consumers who do not receive bills from their inmate calling services providers.<sup>272</sup> We invite comment on this proposal and ask for detailed comment on how providers might implement it. We also seek comment on the timing and frequency of disclosures that are not included directly on consumers' bills. How should consumers be made aware of the availability of the information if it is not automatically provided? Should the information be disclosed to consumers automatically and on an ongoing basis, for example on any online account statement available to that consumer? Alternatively, would including the information on the providers' website for each facility suffice to inform interested consumers? Or should such information be provided only upon request? If so, upon receiving a consumer request, how quickly should a provider be required to supply the consumer with the requested information? Would three to five business days be sufficient or do consumers need more timely receipt of the disclosures in order to manage their accounts effectively? Are inmate calling services providers able to respond to requests for charges for site commissions and international calls within three to five business days? If not, why not? Do consumers who do not receive bills currently receive disclosures regarding providers' charges for site commissions and international calls in some other way? When, if at all, do providers disseminate such information outside the billing context and how frequently is such information updated? Is it available today only upon request?

109. *Who Should Receive Disclosures?* We seek comment on whether account holders should receive disclosures from inmate calling services providers. Our rules define a "consumer" as the party that pays for the inmate calling services.<sup>273</sup> Should we extend our consumer disclosure rules to include incarcerated persons who use inmate calling services accounts that others fund on the incarcerated persons' behalf? Should both the account holder and the incarcerated person have access to the bill or be able to obtain account-related information from the provider when the incarcerated person is not the account holder? Who should be permitted to request the disclosures in such circumstances, the account holder, the incarcerated person, or both? We seek comment on whether anyone other than consumers and incarcerated persons should have access to the required disclosures. Are there other parties who should have access to any required disclosures? We propose to require providers to make information about their rates, terms, and conditions of service, including information about site commissions and international rate components, available generally to the public through either the provider's website or other publicly available source. Making this information publicly available provides maximum transparency and helps ensure that prospective consumers and other interested parties have visibility into the inmate calling service rates and charges at each facility. Do commenters agree? Why or why not?

110. *Statements of Account.* We seek detailed information about how consumers who do not receive traditional bills access information regarding their accounts. Do all such consumers receive a "statement of account" or other account summary setting forth, among other information, the account balance and the charges they have incurred? If so, how are statements of account or similar documents provided to consumers? Are they provided in hard copy, electronically, or both? Are they available only upon request? How often are such statements or disclosures generated and updated? What type of hardware or software is required to produce these statements? Are they only available online such that consumers not having Internet access are unable to retrieve them? Who has access to them, the incarcerated person, the consumer, or both? We propose to require that consumers of inmate calling services and/or incarcerated individuals must have available to them statements of account or similar disclosures if they do not receive bills. To the extent providers do not presently provide statements of

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<sup>272</sup> *Id.* at 5-6; PayTel Oct. 25, 2021 Comments at 3.

<sup>273</sup> 47 CFR § 64.6000(e).



account or other account summaries, how costly would it be to make them available? Would the cost be outweighed by the public interest benefits of such statements?

111. To the extent that consumers receive statements of account or other account summaries, we seek comment on what information, including inmate calling services-related expenditures, is disclosed in them. Is the information provided in an itemized list or only as a total amount charged? If the information is currently provided only on an aggregate basis, how burdensome would it be to provide an itemized statement? How burdensome would it be to add information regarding providers' charges for site commissions and international calls to statements of account or other account summaries?

112. What are the advantages and disadvantages of using statements of account or other account summaries to provide information to consumers rather than statements with itemized disclosures? What challenges do consumers currently face in accessing their account information, including specifically the information required by our consumer disclosure rules? Are there other challenges we should consider in deciding how best to increase transparency in providers' charges and fees? How else can we improve consumers' access to relevant information through changes to our consumer disclosure rules?

113. *Reasonableness.* We seek comment on what factors we should consider in assessing the reasonableness of different disclosure mechanisms. Are our current rules effective in providing information regarding rates, charges, and fees to people who are deaf, hard of hearing, deaf-blind, or have a speech disability? If not, how should we revise those rules to make sure that our disclosure requirements are effective for all consumers? We ask commenters to include details as to what form disclosures should take, how often they should be generated, how they could be accessed, and any other details needed to better inform our understanding. We also ask for detailed proposals on how we can address any deficiencies in the current disclosure mechanisms to ensure that all consumers receive the clear, accurate, and timely information they need to make calling decisions and manage their accounts.

114. *Methods of Dissemination.* We seek comment on the best methods for ensuring that required disclosures reach consumers who do not receive bills. What are the differences in cost between providing disclosures on bills versus other methods? What other methods are available to providers and consumers? Do providers presently use paper statements, kiosks, or other means? What other methods should we consider and why? Which methods are most effective in providing consumers with clear, accurate, and timely information regarding their accounts?

115. If providers do not distribute paper bills, do they disclose account-related information through other means? If so, what means do they use? Should providers be permitted to make required disclosures using only electronic means, such as websites or email, rather than on printed documents? If so, what specific alternative methods do commenters suggest we allow? Should our rules specify how consumers may request copies of their bills, statements of account, or similar disclosures; and if so, how should such a request be made? Commenters are encouraged to explain how a request system would work and to describe any alternative suggestions in detail.

116. We seek comment on how consumers who lack access to the Internet can receive information about the charges to their accounts and their account balances if it is not provided on paper bills. Do consumers have reasonable access to information made available over the Internet or via electronic means? What alternatives are used? How does the consumer inform the provider that they do not have consistent or reliable Internet access and, thus, need an alternative method to access their account information and any relevant disclosures? If the only alternative method available is a paper bill or statement, should we require that the provider deliver it to the consumer without charge? Consumers should be entitled to receive their bills and account statements in some accessible format free of charge.

What specific changes should we make to our rule permitting providers to charge consumers “\$2.00 per use” when they provide “optional paper billing statement[s]”?<sup>274</sup>

117. *Other Rule Changes.* We seek comment on other ways our consumer disclosure rules could be amended to more effectively and efficiently provide consumers information that would help them understand the charges for inmate calling services and associated ancillary services. What, if any, other changes should we make to our rules, beyond those we already describe in this Further Notice? Should other line-item disclosures be required on bills or other account statements? If so, what should those items be? Should we adopt new billing requirements? Should we require that inmate calling services providers issue bills on a periodic basis to all consumers, such as every month? Would it be helpful to add definitions for “bill,” “statement of account,” or any other terms in our rules? If so, what definitions do commenters propose?

118. Our rules require inmate calling services providers to break out in separate line items any site commission fees and international call charges.<sup>275</sup> Are there other rates or fees that we should require providers to disclose as separate line items? Is there other information that we should require providers to disclose? If so, commenters should make specific suggestions. We invite commenters to suggest other proposed actions, alternatives, and rule modifications that we should consider, and to describe issues arising from the foregoing matters. We encourage commenters to address whether any disclosures we require should be part of an aggregate statement of account that includes all charges and fees incurred at the facility, for example commissary or other non-telecom-related charges, or whether we should require a separate statement limited solely to inmate calling services-related disclosures. We encourage commenters to offer specific language concerning any conforming rule changes in relation to any of the foregoing proposals.

119. *Disclosing Rates and Charges.* Finally, our current rules require inmate calling services providers to “clearly, accurately, and conspicuously disclose” their rates and ancillary service charges “on their websites or in another reasonable manner readily available to consumers.”<sup>276</sup> We seek comment on how effective these disclosures have been at providing consumers with the information they need. To what extent do providers use websites to provide this information? Are the website disclosures easy for consumers—particularly those with less technical expertise—to navigate? Are there ways that inmate calling services provider websites could be modified for easier accessibility? If so, what steps would providers need to take to make those modifications? Do any providers use non-website disclosure methods? If so, what are those methods and how effective are they? Should we mandate disclosures via website to the extent providers maintain a website *and* in some other manner to ensure that all current or potential inmate calling service consumers can access the required disclosures?

#### **D. Adopting Permanent Caps on Rates and Ancillary Service Charges**

120. We seek further comment on how we should use the responses to the Third Mandatory Data Collection to establish reasonable, permanent caps on rates and ancillary service charges for interstate and international calling services for incarcerated people. That data collection required each inmate calling services provider to report, among other information, detailed company-wide and facility-specific data reflecting the costs they incurred in providing, and revenues they received from providing,

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<sup>274</sup> See *id.* §§ 64.6000(a)(4), 64.6020(b)(4).

<sup>275</sup> *Id.* § 64.6110(b)-(c).

<sup>276</sup> *Id.* § 64.6110(a). Inmate calling services providers that offer interstate toll service are required to post their rates on their websites, and, to the extent they offer inmate operator services, their live agents are already required to make certain notifications to customers. *Id.* §§ 42.10, 64.710.

inmate calling services and associated ancillary services.<sup>277</sup> In the *2021 ICS Notice*, the Commission sought comment on various issues relating to the establishment of such caps,<sup>278</sup> and we renew our request for comment on these and additional issues to assist with deciding whether to establish rate caps and suggest additional changes to our rules.

121. *Mandatory Data Collection Responses.* We begin by seeking comment on the providers' responses to the Third Mandatory Data Collection because we expect to rely on these responses when evaluating the appropriate changes to our rules. We ask whether the information in those responses meets the standard that the Commission applied in the *2021 ICS Order*, where it examined the providers' responses to the Second Mandatory Data Collection for completeness, internal consistency, and credibility, among other criteria.<sup>279</sup> Do any of the responses deviate from the collection instructions in a way that undermines the value and usefulness of the information provided? If so, how should we correct for such deviations in our evaluation of the information? Are any of the Mandatory Data Collection responses similarly incomplete in that they omit material information? If so, which ones and how are they incomplete? One commenter suggests that certain providers' Annual Reports state that the providers charge no ancillary service fees, when they actually do charge such fees.<sup>280</sup> How should we respond if any provider failed to file a response? Because providers have unique access to such information, what, if any, evidentiary presumptions should we apply if providers failed to file required information?

122. We also seek comment on whether the data included in the responses appear accurate and reliable, and properly reflect the providers' actual costs of providing interstate and international inmate calling services and associated ancillary services. Are there deficiencies in the provided data, such that we should remove apparent invalid or otherwise anomalous data from our analyses?<sup>281</sup> Should we exclude information submitted by providers that is materially deficient and use the responses from the remaining providers in a manner that, if practicable, compensates for the missing data to set permanent caps for all providers? If not, why not and what should we do in the alternative?

123. Are there data for particular providers or facilities that appear so atypical or implausible as to warrant adjustment or exclusion?<sup>282</sup> For example, if there are any providers whose reported annual total costs exceed their reported annual total revenues, should we adjust the providers' reported costs by treating their reported revenues as an upper bound on those providers' actual costs?<sup>283</sup> If we make such an adjustment, should we reduce the reported costs allocated to each facility by the same proportion by which reported annual total costs exceed reported annual total revenues? Similarly, if there are any facilities or contracts whose reported annual costs exceed their reported annual revenues, should we treat the reported revenues as an upper bound on those facilities' or contracts' actual costs? If we make such

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<sup>277</sup> See *Calling Services for Incarcerated People Third Mandatory Data Collection*, WC Docket No. 12-375, Instructions, [http://www.fcc.gov/sites/default/files/2022\\_mdc\\_-\\_instructions\\_to\\_third\\_mandatory\\_data\\_collection\\_1.18.2022.docx](http://www.fcc.gov/sites/default/files/2022_mdc_-_instructions_to_third_mandatory_data_collection_1.18.2022.docx) (Third MDC Instructions) (cited in *Third Mandatory Data Collection Order*, DA 22-52, at 20, Appx. A, Instructions and Template).

<sup>278</sup> *2021 ICS Notice*, 36 FCC Rcd at 9656-59, 9666-72, paras. 302-10, 325-37.

<sup>279</sup> *Id.* at 9706-19, Appx. E at paras. 2-30.

<sup>280</sup> PPI July 15, 2022 *Ex Parte* at 5-6.

<sup>281</sup> See *2021 ICS Order*, 36 FCC Rcd at 9710, Appx. E at para. 11 (excluding contracts with incomplete data).

<sup>282</sup> See *id.* at 9710-11, Appx. E at paras. 12 (excluding an anomalous contract), 14 (excluding the Federal Bureau of Prisons and Talton contracts as not comparable to other inmate calling contracts).

<sup>283</sup> See *id.* at 9708, Appx. E at para. 7 (recognizing that reported revenue is "particularly valuable for the Commission's analysis because [it] provide[s] an upper bound for contract costs").

an adjustment, how should we reallocate the difference among the remaining facilities or contracts? Conversely, is there any evidence that providers have reported costs at the facility level that exceed revenues during the early years of contracts, and proceed to make up the deficits during later years? If so, how should we account for that? How else might we adjust reported costs that exceed reported revenues?

124. Do any providers allocate costs in a manner that overstates costs for certain types of facilities and understates them for others, or otherwise misallocate costs? If so, would relying on those providers' cost allocations lead to rate caps that are unreasonably high for certain facility or contract types but unreasonably low for others? Should we adjust reported costs in such instances, and if so, how?

125. *Allowable Costs.* We invite comment on how we should ensure that providers' reported costs of providing inmate calling services and associated ancillary services reflect prudently incurred investments and expenses that are "used and useful" in the provision of those services.<sup>284</sup> The Commission has historically treated costs as used and useful only to the extent they are "necessary to the efficient conduct of a utility's business, presently or within a reasonable future period."<sup>285</sup> Do the providers' reported costs meet this standard? In particular, are any provider's reported costs outside the range that a reasonably efficient provider would be expected to incur, given the types of facilities it serves?<sup>286</sup> Precisely what adjustments, if any, should we make to exclude costs that are not used and useful from our rate cap calculations?

126. Some commenters have suggested that certain types of expenditures, such as those for providers' security and surveillance services, should be excluded from providers' costs, as they are attributable to functions or services that are distinct from the provision of calling services.<sup>287</sup> We invite comment on this view. In particular, which of the security and surveillance costs that providers included in their filings relate to functions that meet the used and useful standard?<sup>288</sup>

127. *Factors Affecting Costs.* We also seek further comment on factors that affect providers' costs and how we can practicably account for those factors in our analysis.<sup>289</sup> Do the data support the size

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<sup>284</sup> *Id.* at 9575, para. 126; *see, e.g., Sandwich Isles Communications, Inc.*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 577, 580, para. 7 (2019) (discussing the standard and citing precedent such as *American Tel. and Tel. Co.*, Docket No. 19129, Phase II Final Decision and Order, 64 F.C.C.2d 1, 38, paras. 111-13 (1977) and *AT&T Communications Revisions to Tariff F.C.C. Nos. 1, 2, 11, 13, and 14 Application for Review*, CC Docket No. 87-611, Memorandum Opinion and Order, 5 FCC Rcd 5693, 5695, para. 17 (1990)).

<sup>285</sup> *Ill. Bell Tel. Co. v. FCC*, 911 F.2d 776, 779 (D.C. Cir. 1990) (internal quotation marks and citations omitted); *American Tel. and Tel. Co.*, Docket No. 19129, Phase II Final Decision and Order, 64 F.C.C.2d 1, 47, para. 111 (1977).

<sup>286</sup> The D.C. Circuit did not foreclose an efficient provider approach, but in relevant part held only that the data on which the Commission had relied in developing the efficient provider approach that was before the court was flawed, and that the Commission had not adequately accounted for conflicting data. *See GTL v. FCC*, 866 F.3d at 415.

<sup>287</sup> *See, e.g.,* Worth Rises Comments at 2-3; Benj Azose Comments at 2; PPI Comments at 18-19.

<sup>288</sup> Worth Rises suggests that any security or surveillance functions, beyond those that the Communications Assistance for Law Enforcement Act (CALEA) imposes on communications providers generally, are neither necessary for the provision of inmate calling services nor of services to consumers or the general public. Worth Rises Comments at 12.

<sup>289</sup> *See* NCIC Comments at 6-8; Pay Tel Comments at 7; *see also 2021 ICS Order*, 36 FCC Rcd at 9738, Appx. F *passim* (using the least absolute shrinkage and selection operator (Lasso), a recognized statistical method to determine which variables accurately predict providers' costs).

and facility tiers we adopted in the *2021 ICS Order*,<sup>290</sup> or do they lend themselves to other alternative tiers? Should we consider eliminating tiers altogether in favor of a single interstate rate cap for all facilities, regardless of size? We also seek comment on whether average daily population, as opposed to another measure, is the best variable to use if we divide jails into tiers.<sup>291</sup> Commenters should explain how use of alternatives to average daily population would be administratively feasible.

128. Certain commenters suggest that relying on a facility's average daily population fails to account for the additional costs rapid turnover imposes on providers at smaller facilities.<sup>292</sup> Do the data collection responses show that variations in turnover rates, or similar measures such as accounts opened and closed or admissions and releases, result in variations in provider costs that we should consider?<sup>293</sup> Commenters identify certain additional factors, including the greater likelihood of damage to equipment and the need to rely on contract technicians rather than full-time employees, as cost drivers for providers serving smaller facilities.<sup>294</sup> Do the data collection responses sufficiently capture these factors? Do those responses indicate that other variables, such as geographic location or rurality, affect providers' costs of providing calling services and associated ancillary services? How can we account for the various cost drivers in an administratively feasible way in setting permanent interstate and international rate caps?

129. *Permanent Rate Caps.* We ask parties to present their own analyses of the data in providers' data collection responses and to suggest methodologies we might use to set reasonable interstate and international provider-related rate caps.<sup>295</sup> The *2021 ICS Order* employed a zone of reasonableness approach in setting separate interim provider-related rate caps, a process that involved three distinct steps. We first used the cost data that providers had submitted in response to the Second Mandatory Data Collection to establish the maximum upper bounds of providers' reported costs to set interstate provider-related rate caps for prisons and larger jails.<sup>296</sup> Because the data we used in setting the upper bounds may have overstated the providers' prudently incurred and used and useful costs of providing inmate calling services, we then made reasonable, conservative adjustments to the reported data and used the adjusted data to establish the lower bounds of our zones of reasonableness. Finally, we relied on our analysis of the record evidence and on our agency expertise to pick, from within those zones, reasonable interim interstate rate caps for prisons and larger jails.<sup>297</sup>

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<sup>290</sup> See *2021 ICS Order*, 36 FCC Rcd at 9538-40, paras. 46-48.

<sup>291</sup> See Pay Tel Comments at 7-8; Securus Comments at 8-9 (asserting that although average daily population "is not the only determinant" of costs per minute, it is "clearly one of the significant factors explaining the cost variances" among a single provider's facilities) (internal quotation marks omitted).

<sup>292</sup> See Talton Communications Reply at 2, 8; Joint Advocates Comments at 7-8.

<sup>293</sup> Third MDC Instructions at Part IV.D.1.d.(1)(j)-(n) (requiring each provider to submit the total number of inmate calling services accounts opened, total number of calling services accounts closed; total admissions; total releases; and weekly turnover rate for each facility it serves).

<sup>294</sup> See, e.g., NCIC Comments at 6; Securus Comments at 8.

<sup>295</sup> The interim rate caps adopted in the *2021 ICS Order* have two components: a "provider-related rate component," designed to allow providers to recover the costs they incur in providing interstate and international inmate calling services; and a "facility-related rate component" designed to compensate providers for certain of the site commission payments they are obligated to make to facilities. See *2021 ICS Order*, 36 FCC Rcd at 9540-92, paras. 49-168.

<sup>296</sup> Note that we did not assess whether the providers' cost data reflected prudently incurred and/or used and useful costs. See *id.* at 9558-61, paras. 93-99.

<sup>297</sup> See *id.* at 9553-61, 9706-07, 9713, paras. 81-99, Appx. E at paras. 3-4, 19-20.

130. Should we similarly employ a zone of reasonableness approach in setting permanent provider-related rate caps? If so, what data should we use to set the upper and lower bounds of each zone of reasonableness?<sup>298</sup> If not, what alternative should we use instead? If we continue to employ a zone of reasonableness approach, is it necessary or appropriate to retain the one standard deviation above and below industry-wide mean costs in setting the upper and lower bounds of each zone?<sup>299</sup> Alternatively, should we simply establish our upper and lower bounds based on industry-wide mean costs, and develop an alternative process to ensure an opportunity for cost recovery for high-cost providers? If so, what should that process be? Or should we use another measure to set the bounds instead, such as the interquartile range statistical methodology that one commenter suggests?<sup>300</sup> Should we disregard providers, contracts, or facilities whose costs vary significantly from the costs of other similarly situated providers, contracts, or facilities in setting our upper and lower bounds? How should we determine whether this significant variation reflects costs that are prudently incurred and used and useful in the provision of inmate calling services? What adjustments should we make to exclude reported costs that were not prudently incurred or are not used and useful from our rate cap calculations?

131. We seek comment on the appropriate permanent rate caps given providers' responses to the Third Mandatory Data Collection. If we employ a zone of reasonableness approach, what factors should we consider in selecting permanent rate caps from within the zone for each rate tier?<sup>301</sup> In particular, how should we ensure that each provider is fairly compensated for its prudently incurred costs that are used and useful in the provision of inmate calling services and ensure that consumers are charged just and reasonable interstate and international rates?<sup>302</sup> Should we set rate caps that would ensure that the majority of providers, contracts, and facilities are able to recover their prudently incurred, used and useful costs, while avoiding overcompensation, and use a separate process to address outliers? If so, what process should we use to ensure that the outliers are not compensated for their inefficiencies? For example, should we separate providers, contracts, or facilities according to factors that drive costs such as size, turnover, or other factors, and then conclude that providers, contracts, or facilities within each group should have largely similar costs? Should such an approach also account for possible differences in providers' cost allocation methodologies, as set forth in their reported costs? Would it be appropriate to establish separate rate caps for each provider, or groups of providers? Would this similarly allow for cost recovery without the need to include a buffer? Would that change in approach distort the bidding market by, for example, giving providers with higher rate caps an advantage in seeking new or renewed contracts? Would it raise other new concerns, such as a heightened risk of abuse in providers' future cost reporting?

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<sup>298</sup> In the *2021 ICS Order*, we set the upper bounds of the zones of reasonableness using industry-wide mean contract costs per minute, plus one standard deviation relative to that mean. We set the lower bounds relying on widely accepted statistical tools, including the *k*-nearest neighbor method, to adjust for deficiencies in the provided data. *Id.* at 9554-57, paras. 85, 89-92.

<sup>299</sup> *See id.* at 9742, Appx G.

<sup>300</sup> Securus Comments at 9-11 (arguing that using an interquartile range would allow the Commission to “more accurately set[] caps at levels that effectively eliminate[] outlier data but allow[] all non-outlier costs to be recovered”).

<sup>301</sup> *See 2021 ICS Order*, 36 FCC Rcd at 9553-58, paras. 81-92.

<sup>302</sup> *See Inteliquent v. FCC*, No. 20-1471, slip op. at 16 (D.C. Cir. May 27, 2022) (finding no requirement that the Commission set a rate cap above the costs of the highest cost provider); *see also* 47 U.S.C. § 276(b)(1)(A) (specifying that providers are to be “fairly compensated for each and every completed intrastate and interstate call”); 47 U.S.C. § 201(b) (specifying that all “charges, practices, classifications, and regulations for and in connection with [interstate or foreign communication by wire or radio] shall be just and reasonable”).

132. We also seek comment on how the collected data should affect our resolution of other issues relating to our rate cap calculations. We seek comment on the benefits, issues, and obstacles of analyzing the collected data at the contract or company-wide level, as opposed to the facility level.<sup>303</sup> Would analyzing the data at the contract level help to develop cost allocations that better reflect commercial reality? Alternatively, would a focus on contract-level costs increase the likelihood of widespread overcompensation? Could we segregate contracts according to size, inmate turnover, composition of facilities, or other factors that drive costs? If our rate caps were to allow every provider to fully recover its allowable costs at the contract or the company-wide level, would there be any concern that the costs allocated to some facilities would exceed the provider's revenues from those facilities? Or would it suffice, in those circumstances, if the provider's revenues from each facility equaled the portion of its allowable costs directly assigned or directly attributed to the facility plus an additional amount to offset a portion of the provider's other costs?<sup>304</sup>

133. *Treatment of Ancillary Services.* We seek comment on how we should use the responses to the Mandatory Data Collection to reevaluate and, if appropriate, revise our ancillary services rules and fee caps. Our current rules permit providers to charge fees for ancillary services in addition to the per-minute fees they charge consumers for interstate and international calls. Do the reported data provide a reasonable allocation of costs between inmate calling services and various ancillary services? If so, do those data demonstrate that the current ancillary services fee caps are commensurate with the reasonable costs of those services? If not, how can we cap ancillary service charges to levels that more accurately reflect costs?

134. Some commenters suggest we should remove costs related to ancillary services from our calculations of our per-minute rate caps.<sup>305</sup> Should we take that approach? Alternatively, are some or all of these services an inherent part of providing inmate calling services, and consequently should we include those costs in our per-minute rate cap calculations and eliminate some or all charges for ancillary services? For instance, would it be reasonable for us to include all costs that providers incur in processing credit and debit card payments in our per-minute rate cap calculations and preclude providers from imposing separate charges in connection with those payments? Would it make sense for providers to recover all their billing costs through per-minute charges, rather than splitting that recovery among calling services and the providers' ancillary services? Should we instead analyze both sets of services together, and require that total revenues from both inmate calling services and permissible ancillary services not exceed the combined reasonable costs of both service types? Which approach would provide the best overall rate structure?

135. Under what circumstances should we continue to permit separate ancillary service fees? For example, should we do so where the service is only supplied at the customer's discretion? For ancillary services that commenters recommend that we continue to separate fees, we seek comment on whether we should adjust the current caps. We ask commenters to present their own analyses of ancillary

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<sup>303</sup> See 2021 ICS Order, 36 FCC Rcd at 9712, Appx. E at para. 18.

<sup>304</sup> See *id.* at 9602, para. 189 (recognizing that "fair compensation" under section 276(b)(1)(A) of the Communications Act, does not mean that each and every completed call must make the same contribution to a provider's indirect costs" and that "compensation is fair if the price for each service or group of services 'recovers at least its incremental costs, and no one service [e.g., interstate calling service] recovers more than its stand-alone cost'") (citing *Implementation of Pay Telephone Reclassification & Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order on Remand and Notice of Proposed Rulemaking, 17 FCC Rcd 3248, 3255-56, para. 18 (2002)) (other internal citations omitted).

<sup>305</sup> See, e.g., Joint Advocates Comments at 14-15; PPI Comments at 10-11; PPI July 15, 2022 *Ex Parte* at 6 (suggesting elimination of the fee for delivery of paper billing statements).

services cost and revenue data and to suggest methodologies we might use to adjust the ancillary services fee caps. Should we develop separate zones of reasonableness for each type of permissible ancillary service? If so, how should we calculate the upper and lower bounds of each service, and what factors should we consider in picking a new cap from within the zone? If not, why not and what alternative approach should we use?

136. We seek further comment on whether the reported data reveal a need for additional revisions to our ancillary service charges rules. In the *2021 ICS Notice*, we highlighted record evidence concerning the assessment of “‘duplicate transaction costs’ on the same payments,”<sup>306</sup> and we sought comment on “whether the credit card processing fees encompassed in the automated payment fee are the same credit card processing fees referred to in the third-party financial transaction fee.”<sup>307</sup> In response, PPI urges the Commission to prohibit inmate calling services providers from charging both automated fee payments and third-party transaction fees arising from the same transaction because, “carriers are recouping payment-card processing costs twice over.”<sup>308</sup> Similarly, NCIC asks the Commission to “prohibit third-party transaction fees which lead to double billing of [inmate calling services] customers.”<sup>309</sup> Several parties also argue that including credit card processing fees as part of the third-party pass-through allowance “was a mistake, and has led to abuse.”<sup>310</sup> On the other hand, Securus claims that it may impose an automated payment fee “that recovers the internal costs in managing accounts and may also impose a third-party credit card processing fee to cover the costs imposed on Securus by a third-party credit card payment processing company if a credit card is used to fund a prepaid account.”<sup>311</sup> Securus agrees that “a straightforward requirement barring duplication of the same charges for the same transaction or payment” would be appropriate,<sup>312</sup> but contends that it “should be entitled to recover that third-party cost.”<sup>313</sup> Similarly, GTL asserts that the Commission “consistently has maintained a distinction between Automated Payment Fees assessed by an [inmate calling services] provider on a

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<sup>306</sup> *2021 ICS Notice*, 36 FCC Rcd at 9667, para. 327. The Commission sought comment on whether providers engaged in such “double dipping,” as alleged in the record, and whether the Commission’s rules clearly prohibit assessing multiple ancillary service charges per transaction or should be amended to implement such a prohibition. *Id.* at 9667-69, paras. 327-29.

<sup>307</sup> *Id.* at 9667, para. 327.

<sup>308</sup> See PPI Comments at 10-11; see also PPI Reply at 3-4. PPI contends that “[w]hen carriers impose the \$3 fee allowed under 47 CFR § 64.6020(b)(1) while also making customers pay the carrier’s card processing costs under § 64.6020(b)(5), this constitutes an unreasonable charge, unjust enrichment, and circumvention of the Commission’s stated purpose in promulgating ICS rules.” PPI Comments at 11.

<sup>309</sup> NCIC Comments at 10.

<sup>310</sup> *Id.*; PPI Reply at 4; Wright Petitioners Reply at 10-11. Securus agrees that “such double recovery, if it is occurring, would be inappropriate and the Commission should clarify that a credit card processing fee may only be imposed once for the same transaction or payment.” Securus Comments at 19.

<sup>311</sup> Securus Comments at 19; see also *id.* at 19-20 (arguing that Securus should be entitled to assess a live agent fee and a third party credit card processing fee if a consumer calls a Securus call center and, after the consumer provides credit card information to make a payment, the credit card information “is sent to a third-party for processing”).

<sup>312</sup> Securus Comments at 19. Securus and GTL also argue that the Commission should not assume that the assessment of more than one transaction fee for a single transaction means that double recovery is taking place. *Id.* at 19-20; GTL Comments at 11.

<sup>313</sup> Securus Comments at 20.



qualifying transaction and the attendant Third-Party Financial Transaction Fees a provider may pass through to the consumer to facilitate the completion of that transaction.”<sup>314</sup>

137. We invite comment on these issues related to transactions that involve credit card processing, including whether the data show that providers assess multiple ancillary services charges for a single transaction.<sup>315</sup> Do the data from the Third Mandatory Data Collection demonstrate that providers are recovering payment card processing costs twice? If so, which data show this double recovery? Do commenters agree with NCIC and PPI that the inclusion of credit card processing in connection with third-party financial transaction fees was a “mistake?”<sup>316</sup> Why or why not? Should we clarify that payment card processing fees may not be imposed multiple times for a single transaction or payment, but still allow providers to charge both an automated payment fee as well as a third-party financial transaction fee for a single transaction, in order to recover “costs imposed . . . by a third-party credit card payment processing company,” as Securus suggests?<sup>317</sup> Or should we disallow the inclusion of payment card processing costs in connection with third-party financial transaction fees?

138. Do the data show evidence of other forms of potentially duplicative charges with respect to ancillary service charges?<sup>318</sup> If so, which data? NCIC offers documentation that certain inmate calling services providers may be imposing additional ancillary fees on inmate calling services consumers in contravention of the Commission’s rules.<sup>319</sup> NCIC alleges that “the imposition of additional transactional fees has grown to be a significant revenue generator for certain [inmate calling services] providers” and provides evidence that certain providers may be tacking on additional fees for online deposits.<sup>320</sup> For example, in one instance, a provider appears to have charged a \$3.00 transaction fee and a 6% credit card processing fee (among other fees) on a \$10 deposit.<sup>321</sup> We invite comment on these purported practices, and whether these fees recover valid costs or are leading to double recovery for providers.

139. We seek comment on further reforms we should make to fees for single-call services and third-party financial transaction fees to ensure that charges are just and reasonable.<sup>322</sup> As an initial matter, in the Order, we lower the caps on fees for single-call services and third-party financial transaction fees to \$3.00 for automated payment transactions and \$5.95 for live agent transactions.<sup>323</sup> PPI suggests that we

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<sup>314</sup> GTL Reply at 12.

<sup>315</sup> See, e.g., NCIC Comments at 10 (describing certain providers’ ancillary services charge practices); PPI Comments at 10-11 (contending that imposing an automated payment fee of \$3.00 and a third-party financial transaction fee of \$6.95 for the same transaction is unjustified).

<sup>316</sup> NCIC Comments at 10; PPI Reply at 4.

<sup>317</sup> Securus Comments at 19.

<sup>318</sup> See 2021 ICS Notice, 36 FCC Rcd at 9668, para. 328 (requesting comment on “specific evidence of other forms of double-dipping in the record”). We likewise seek comment on whether there are scenarios in which the imposition of more than one ancillary service charge may be appropriate. See, e.g., Securus Comments at 19-20; GTL Reply at 12.

<sup>319</sup> NCIC July 15, 2022 *Ex Parte* at 2-8.

<sup>320</sup> *Id.* at 3-6.

<sup>321</sup> *Id.* at 6.

<sup>322</sup> 47 U.S.C. § 201(b).

<sup>323</sup> See *supra* Part III.E.

should “impos[e] even lower caps” after the conclusion of the data collection.<sup>324</sup> Do the data from the Third Mandatory Data Collection support lowering these caps, as PPI suggests? If so, to what levels? Securus on the other hand asserts that the automated payment fee “recovers the internal costs in managing accounts.”<sup>325</sup> What are the costs associated with “managing accounts”? Should those costs be recoverable through the automated payment fee? Or should those costs be factored into the per-minute inmate calling services rates? Commenters should be as specific as possible identifying circumstances under which any such costs should be factored into the per-minute inmate calling services rates.

140. Some commenters argue that live agents may not be available in single-call services.<sup>326</sup> Do other commenters agree with this assessment? One commenter suggests that the fee for single-call services should be no more than \$0.25 to cover credit card transaction fees.<sup>327</sup> We seek comment on this cap. Should we consider prohibiting inmate calling services providers from imposing anticipated taxes on consumers at the time of a deposit? NCIC suggests that without knowing each call’s end point, the provider cannot determine the actual tax obligation arising from a call, resulting in overcollection by the provider.<sup>328</sup> How should we ensure that consumers are not overcharged by providers for anticipated federal, state, or local taxes?

141. PPI asserts that single-call services are “losing popularity and are becoming uncommon in the industry,” given that, by definition, they require third-party billing.<sup>329</sup> PPI contends that “carriers still commonly allow or encourage customers to pay for calls on a one-off basis, but billing is typically done directly by the carrier without the involvement of a third party.”<sup>330</sup> Do commenters agree? How prevalent are single-call services? For those who are newly incarcerated, are single calls the only way to make initial contact with loved ones outside of the correctional facility? If not, what other options are available? How do providers bill for single-call services? If a provider uses a third party to bill for single-call services, and also assesses an automated payment fee on consumers who elect to pay by credit card, should we allow providers to assess both a third-party payment fee and an automated payment fee for the same transaction? Relatedly, we are concerned that consumers without a credit or debit card may be unable to pay for single calls from an incarcerated individual because payment using a credit or debit card appears to be the only option for consumers to pay for such calls at the time the call is made.<sup>331</sup>

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<sup>324</sup> PPI Comments at 8; *see also* NASUCA Comments at 2 (questioning the justification for allowing a \$3.00 automated payment fee “for a single call using a payment card”).

<sup>325</sup> Securus Comments at 19.

<sup>326</sup> PPI Reply at 5 (highlighting a Securus call script for single-call products, which does not present the option of speaking to a live operator). *But see* Securus June 21, 2022 *Ex Parte* at 1 (explaining that Securus no longer “utilizes live agents to facilitate transactions” and suggesting that live agents could be involved in single call scenarios).

<sup>327</sup> *See* NCIC Comments at 12-13.

<sup>328</sup> NCIC July 15, 2022, *Ex Parte* at 7.

<sup>329</sup> PPI June 14, 2022 *Ex Parte* at 1.

<sup>330</sup> *Id.* at 1-2 (explaining that PPI is “unaware of any instances where a third-party money transmitter (such as Western Union or Moneygram) is involved in the completion of a call”).

<sup>331</sup> NCIC Comments at 13 (explaining that “[t]he idea behind single-call products is to provide a convenience for family member[s] by allowing them to accept a single call without having to go through the process of setting up an account, but yet, in most cases, they still have to enter in a major credit card or a debit card to accept these calls”); PPI July 15, 2022 *Ex Parte* at 2 (emphasizing that “[s]omeone receiving a first-time call from prison or jail is unlikely to have a prepaid account with the [inmate calling services] carrier that serves that facility; thus, the only way they can accept and pay for the call is with a payment card”).

NCIC conducted test calls and discovered that a consumer without an account or enough funds to pay for a call could either pay using a payment card or decline the call.<sup>332</sup> Do commenters agree that consumers must use a payment card to pay for single calls? If not, how can consumers pay for single calls if they do not have a credit or debit card? How can we ensure that incarcerated people are able to successfully initiate communication using single-call products? Should we prohibit any transaction fees on single calls?<sup>333</sup>

142. Finally, we seek comment on how our ancillary service charges caps should be adjusted to better reflect the actual cost of providing particular ancillary services, in light of the data from the Third Mandatory Data Collection. In the *2021 ICS Notice*, the Commission sought comment on proposals to reduce our ancillary service charge caps and whether we should adjust the caps based on the data from the Third Mandatory Data Collection.<sup>334</sup> In response, PPI supports lowering the caps on third-party financial transaction fees, fees for single-call services, automated payment fees, and live-agent fees, following completion of the Third Mandatory Data Collection.<sup>335</sup> Do the data from the Third Mandatory Data Collection support reductions of these fees? If so, to what levels? Commenters should provide their own analyses of the reported data in support of any proposed caps. NCIC argues that “certain ancillary costs have increased.”<sup>336</sup> NCIC points to the fact that credit card processing fees have not decreased in the past six years, but certain compliance requirements such as Payment Card Industry Certification “requires more rigorous network intrusion testing than what was required six years ago when the ancillary caps were first adopted.”<sup>337</sup> NCIC also posits that labor costs have increased “by at least 20% in the past 6 years.”<sup>338</sup> Do commenters agree with these assertions? Do the data from the Third Mandatory Data Collection support a conclusion that ancillary services costs have increased? If so, how? To account for increasing costs, NCIC suggests that “there should be a process for the [Commission’s] ancillary fee caps to be adjusted to account for inflation and labor costs.”<sup>339</sup> Do commenters support this proposal? If so, what mechanism could we adopt to implement such a proposal and how could that mechanism be incorporated into our rules?

#### **E. Potential Pilot Programs Offering Alternative Pricing Structures**

143. We seek further comment on whether to allow inmate calling services providers to offer optional pilot programs that offer consumers the ability to purchase inmate calling services under alternative pricing structures, in addition to the traditional per-minute pricing model required by our rules. We invite commenters to elaborate on the specific elements and attributes we should require of any pilot we might allow, and how we can ensure that providers structure such pilot offerings in a manner that does

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<sup>332</sup> NCIC July 15, 2022 *Ex Parte* at 2.

<sup>333</sup> See NCIC Comments at 10 (encouraging the Commission to prohibit transaction fees on single calls as those fees “only lead[] some providers to make [single calls] the first and easiest option to place a call” and suggesting there is “no cost-basis to charge a \$3.00 transaction fee for a single call that may last for only 1 minute”); PPI Reply at 5 (supporting NCIC’s proposal to prohibit transaction fees on single calls); NASUCA Comments at 2 (questioning whether allowing an “ancillary payment fee charge of \$3.00 for each and every single credit card call” may not be appropriate).

<sup>334</sup> *2021 ICS Notice*, 36 FCC Rcd at 9671, para. 334.

<sup>335</sup> PPI Comments at 7-8; PPI Reply at 4.

<sup>336</sup> NCIC Comments at 12.

<sup>337</sup> *Id.*

<sup>338</sup> *Id.*

<sup>339</sup> *Id.*

not harm consumers. In particular, we seek comment on how to limit such pilot programs so they would not undermine our caps on interstate and international rates and ancillary services charges. We invite comment on whether, as some parties suggest,<sup>340</sup> pilot programs offering alternative pricing structures, generally, would benefit incarcerated people and their families by lowering calling costs and increasing connectivity. We also seek comment on whether we should permit any such pilot programs only subject to certain specified conditions.

144. *Background.* Our rules prohibit inmate calling service providers from charging for calls on a per-call or per-connection basis and require the providers to price their interstate, international, and jurisdictionally indeterminate calling services at or below specific per-minute rate caps.<sup>341</sup> This structure results in incarcerated persons and their families paying for their interstate and international phone calls on a per-minute basis.<sup>342</sup> Outside of correctional facilities, however, most phone users no longer pay per-minute rates for the phone calls they place.<sup>343</sup>

145. In the *2021 ICS Notice*, we sought comment on alternative pricing structures that depart from traditional per-minute pricing. Among other questions, we asked whether we should allow providers to offer different optional pricing structures subject to the Commission's prescribed rate caps<sup>344</sup> and whether the Commission should adopt a process for waiving the per-minute rate requirement to allow for the development of alternative pricing structures.<sup>345</sup> Shortly after the release of the *2021 ICS Notice*, Securus filed a petition asking us to waive our pricing structure rules to allow Securus and other providers to offer alternative rate options.<sup>346</sup> According to the Petition, Securus had offered pilot programs at certain facilities that gave consumers the option to purchase intrastate inmate calling services pursuant to

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<sup>340</sup> See, e.g., Securus Petition for Waiver of the Per Minute Rate Requirement to Enable Provision of Subscription Based Calling Services, WC Docket No. 12-375, at 6-7 (filed Aug. 30, 2021) (Securus Petition for Waiver); Securus Comments, WC Docket No. 12-375 (filed Jan. 7, 2022); Securus Reply, WC Docket No. 12-375, at 1-5 (filed Jan. 21, 2022); Letter from Joanna Acocella, Chief Corporate Affairs Officer, Aventiv on behalf of Securus, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 1-2 (filed Mar. 8, 2022); PPI Comments, WC Docket No. 12-375, at ii (filed Jan. 7, 2022) (PPI Jan. 7, 2022 Comments) (claiming alternative pricing structures could benefit consumers if regulated appropriately); GTL Comments, WC Docket No. 12-375, at 7 (filed Jan. 7, 2022) (arguing that “[e]nabling [inmate calling services] providers to offer alternative pricing options serve[s] the public interest as it will promote increased calling while reducing costs for the incarcerated and their friends and families”).

<sup>341</sup> 47 CFR § 64.6030 (setting forth the Commission's interstate and international interim rate caps); *id.* § 64.6080 (prohibiting per-call or per-connection charges); *id.* § 64.6090 (prohibiting flat-rate calling); see also *id.* § 64.6070 (limiting the taxes and governmental fees that providers may pass through to consumers). For convenience, we refer to 47 CFR §§ 64.6030, 64.6080, 64.6090 as the pricing structure rules. Separately, our rules allow inmate calling service providers to charge consumers for any of five specified types of ancillary services charges, each subject to their own respective caps. *Id.* § 64.6020.

<sup>342</sup> See generally *2021 ICS Order*, 36 FCC Rcd at 9547, para. 68 (determining that per-minute rates are preferable to per-call rates).

<sup>343</sup> See, e.g., Benj Azose Comments at 3 (explaining that it is “very difficult to find a pay-per-minute cell phone plan out in the market any more”); PPI Jan. 7, 2022 Comments at 8 (describing “a typical consumer wireless phone plan where customers receive a certain number of minutes of use (or unlimited minutes) per month for a flat fee”); *2021 ICS Order*, 36 FCC Rcd at 9631, para. 248 (explaining that inmate calling services providers “rarely, if ever, offer all-distance calling plans with uniform rates and charges for intrastate and interstate calls as do most, if not all, other telecommunications service providers”).

<sup>344</sup> *2021 ICS Notice*, 36 FCC Rcd at 9657, para. 305.

<sup>345</sup> *Id.*

<sup>346</sup> See generally Securus Petition for Waiver.

subscription pricing plans.<sup>347</sup> For a flat fee, consumers who elected to participate could buy packages of 25 telephone calls per week or 100 calls per month.<sup>348</sup> Securus asserts that the effective price of these packages ranged from \$0.02 to \$0.07 per minute for consumers who used every available minute, lower than the rate caps applicable to interstate calls made from the same facilities.<sup>349</sup> Securus explains, however, that because many of the calls made using the subscription plans were “to wireless phones whose exact physical location [was] difficult to determine,”<sup>350</sup> it had to “treat potentially in-state but [jurisdictionally] indeterminate calls as interstate calls whose rates are limited to per-minute charges, jeopardizing the development and availability of flat-rate subscription plans for multiple calls.”<sup>351</sup>

146. Several commenters responded to Securus’s petition by seeking more information about the company’s pilot programs and expressed concerns that incarcerated people and their families may not have received enough information to make informed decisions about whether the programs would meet their needs.<sup>352</sup> Specifically, commenters ask that Securus be required to provide consumers with more complete disclosures regarding prices, fees, call metrics, and the terms and conditions relating to renewal and cancellation of its alternative calling plans.<sup>353</sup> Commenters also urge the Commission to require any pilot program to adhere to certain pricing, disclosure, and other conditions to protect incarcerated persons and their families from abuse.<sup>354</sup>

147. *Potential Pilot Programs.* We seek comment on whether we should amend our rules to permit providers—subject to certain conditions—to offer pilot programs for inmate calling services that

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<sup>347</sup> *Id.* at 3-4. The correctional institution determined the maximum amount of time available for each call, and the maximum call duration typically varied between 15 and 30 minutes. *Id.* at 3.

<sup>348</sup> *Id.* at 3-4. This flat rate consists of a base rate plus a charge for the recovery of site commissions if applicable. *Id.* at 3. Securus also charged a \$3.00 automated payment fee upon enrolling in or renewing a subscription plan. *Id.* at 3-4.

<sup>349</sup> *Id.* at 4-6 (noting that the per-minute effective rates under these preliminary pricing structures range from \$0.02 to \$0.05 per minute for the larger monthly calling plans and from \$0.03 to \$0.07 per minute for the smaller weekly plans). If consumers used less than half of their available calling minutes, Securus asserts that the effective per-minute price increased to a range of \$0.03 to \$0.13 per minute. *Id.* at 4.

<sup>350</sup> *Id.* at 2.

<sup>351</sup> *Id.* WCB sought comment on Securus’s Petition. *Wireline Competition Bureau Seeks Comment on Securus Technologies, LLC’s Petition for Waiver of the Inmate Calling Services Per-Minute Rate Requirement*, WC Docket No. 12-375, Public Notice, DA 21-1422 (WCB Nov. 12, 2021). Although we do not resolve Securus’s Petition today, we do seek further comment on the benefits of the subscription calling pilot program as described therein, and on other pilot programs that providers may offer under our rules.

<sup>352</sup> See, e.g., PPI Jan. 7, 2022 Comments at 18; Worth Rises, Response to Securus Technologies, LLC, Petition for Waiver of the Per Minute Rate Requirement to Enable Provision of Subscription-Based Calling Services, WC Docket No. 12-375 (filed Oct. 14, 2021) (Worth Rises Oct. 14, 2021 Comments); Worth Rises Comments, WC Docket No. 12-375, at 2-3 (filed Jan. 7, 2022) (Worth Rises Jan. 7, 2022 Comments).

<sup>353</sup> See, e.g., NCIC Comments, WC Docket No. 12-375, at 5 (filed Jan. 7, 2022) (NCIC Jan. 7, 2022 Comments) (noting the lack of information surrounding refunds for unused calls); PPI Jan. 7, 2022 Comments at 16-19 (expressing concern over the lack of insight into call metrics, the cancellation policy, and the terms and conditions of the pilot program); Worth Rises Jan. 7, 2022 Comments at 2 (asking for clarification on call length and usage data, dropped calls, unused calls, and renewals).

<sup>354</sup> See, e.g., Worth Rises Oct. 14, 2021 Comments at 2-5; Worth Rises Jan 7, 2022 Comments at 2; Electronic Privacy Information Center Comments, WC Docket No. 12-375, at 5 (filed Jan. 7, 2022); NCIC Jan. 7, 2022 Comments at 4-5; PPI Jan. 7, 2022 Comments at 6-9; PPI Jan. 21, 2022 Reply at 5.

use pricing structures other than per-minute rates. We seek comment on the types of alternative programs that would be most beneficial to incarcerated people and on the reasons why such programs would be superior to the current per-minute pricing structure. Would a flat-rate package, such as a single price for an allotment of minutes, offer the most benefits? We encourage commenters to fully explain how any pricing model would operate, how it would benefit consumers, and how we can ensure that it would not harm consumers. We encourage commenters to describe potential pilot programs in detail, including both the pricing and other operational features of any program.

148. What would be the costs and benefits of various types of alternative pricing structures? Would certain alternative pricing structures offer incarcerated people and their families more predictable, reliable, or affordable calling rates than others? If so, which rate structures would be most advantageous to consumers and why? Which types of offerings would give providers greater certainty regarding their inmate calling services revenues or offer other benefits tied to predictability? What type of consumer outreach or education would be needed to ensure that consumers are able to choose the pricing structure that best meets their needs?

149. *Potential Conditions.* We seek comment on whether and how we could ensure that all pilot programs offer rates that, on a per-minute basis, are less than our current per-minute rate caps. What measures would be needed to protect consumers against unreasonably high interstate and international rates in connection with pilot programs? How should we determine whether the rate offered under any proposed alternative pricing structure is, on a per-minute basis, less than our rate caps? Should we take the total price of the pilot program offering and divide it by the total amount of minutes available under that program? How else might we determine whether a specific alternative pricing structure results in higher effective rates for consumers than what they would pay under the applicable per-minute caps? Should we provide for true-up procedures, under which providers would be required to refund any revenues exceeding those permitted under our rules? We encourage commenters to be specific and to demonstrate how any given structure would be consistent with our caps. Should we assume that each consumer will use every call and minute available under an alternative pricing program? Or should we require that the consumer's actual usage be taken into account?<sup>355</sup> If we take the latter approach, how should we assess whether a pilot program's pricing is consistent with our caps? Should we require that any alternative plan offer consumers a discount compared to what they would pay for the same usage under our existing per-minute rate caps? If so, what should the minimum discount be? Finally, how should we treat plans that offer an unlimited number of minutes or have indefinite terms?

150. We seek further comment on whether all pilot programs should be optional, so that incarcerated people and their families always are able to choose to purchase interstate and international calling services at per-minute prices that do not exceed our rate caps. If so, how should we implement this condition for different types of pilot programs? We also seek comment on whether there are specific policies we should adopt to protect consumers and on whether there are specific features or attributes that different pilot programs should include. Should we require providers to offer a set minimum number of calls or minutes per month, or other time period?<sup>356</sup> Should we require providers to allow consumers to roll over any unused minutes into each successive subscription period?<sup>357</sup> Are there other specific parameters we should require? Should providers be required to provide credits or otherwise make

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<sup>355</sup> See, e.g., Worth Rises Jan. 7, 2022 Comments at 2 (suggesting that consumers' effective rates may exceed the Commission's rate caps if the consumer does not use all the minutes allotted with their plan).

<sup>356</sup> NCIC Jan. 7, 2022 Comments at 3-4 (advocating for fixed-minute plans with fixed durations, and for subscription-based plans to be offered based on minutes of use rather than on the number of calls placed).

<sup>357</sup> See, e.g., Worth Rises Jan. 7, 2022 Comments at 2 (advocating for roll-over policies).

consumers whole for any calls that are not completed or that are dropped?<sup>358</sup> If a pilot program offers calling services on a periodic subscription basis, should consumers be able to opt out of automatic renewals of their subscriptions?<sup>359</sup> Should providers be required to provide more than one opt-out method?<sup>360</sup> Should consumers be permitted to cancel a subscription before the end of the subscription period? If so, should providers be required to offer refunds? If providers are required to offer refunds, how should they provide such refunds in the event of cancellation prior to the end of a subscription term?<sup>361</sup>

151. *Disclosures and Consumer Awareness.* We invite comment on what rules, if any, we should adopt to ensure that providers clearly, accurately, and conspicuously disclose the details of any alternative pricing plans, while at the same time clearly conveying to consumers the continued availability of per-minute calling plans. Since providers may implement different types of alternative pricing structures, it is critical that incarcerated people and their families understand their provider's alternative offerings and how they differ from per-minute usage.<sup>362</sup> We seek comment on what information consumers would need about providers' pilot programs to help them make informed choices between a pilot program and traditional per-minute pricing. Should we require providers to inform consumers how a pilot program's prices translate on a per-minute basis, to enable consumers to make an informed decision between the program and the traditional per-minute pricing model?<sup>363</sup> If not based on an equivalent per-minute price, how should any price comparison be made? More generally, how should providers present the prices under alternative plans, and what specific elements should be itemized? What sort of terms and conditions would help consumers understand what a given plan entails?<sup>364</sup> Should we adopt additional rules governing how providers should disclose to consumers the rates, terms, and conditions associated with any pilot program? If so, what specific information should providers be required to disclose? Should we require a written or electronic disclosure, or otherwise specify the manner in which providers must make any required disclosures?

152. We seek comment on these potential conditions, and on any other conditions that would need to be put in place in order to preserve the protections for incarcerated people under our rules.<sup>365</sup> Should we require providers to inform the Commission of their intent to offer a pilot program and the details of that program, or require other notification steps? Are there any other constraints or requirements we should adopt? Conversely, are there other rules we might need to waive in order for pilot programs using alternative pricing structures to be commercially viable?

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<sup>358</sup> See, e.g., *id.* (expressing concern over dropped calls); see also PPI Jan. 7, 2022 Comments at 16-17 (same).

<sup>359</sup> See Worth Rises Jan. 7, 2022 Comments at 2 (suggesting that consumers' subscriptions may default to renewals those consumers do not intend to purchase).

<sup>360</sup> See, e.g., *id.* (criticizing Securus's renewal policy).

<sup>361</sup> See, e.g., NCIC Jan. 7, 2022 Comments at 2 (advocating for refunds in the event of cancellation); Worth Rises Jan. 7, 2022 Comments at 2 (discussing cancellation mid-stream and the process for obtaining consumer refunds).

<sup>362</sup> See, e.g., PPI Jan. 7, 2022 Comments at 8-9 (explaining how subscription services for inmate calling services do not compare to wireless phone plans, which may lead to confusion).

<sup>363</sup> See NCIC Jan. 7, 2022 Comments at 4 (requesting a side-by-side comparison of rates that discloses the difference in the prices under the various plans at each facility where the subscription plans are offered).

<sup>364</sup> Various terms and conditions could include, but are not limited to: pilot program costs, ancillary service charges, automatic renewal terms, cancellation policies, and refund policies.

<sup>365</sup> PPI Jan. 7, 2022 Comments at ii (raising concerns that alternative pricing structures could lead to exorbitant phone bills without appropriate regulation).

153. *Pilot Period.* We seek comment on whether we should authorize pilot programs for a limited period, for example two years. Would such a time period provide sufficient time to allow incarcerated people and their families to adjust to the offerings and for the Commission to more fully evaluate the costs and benefits of any individual program? Would two years allow the market to adjust to any new offerings? Should we adopt a longer or shorter period? Why or why not? Are there relevant performance metrics, such as rate of adoption or usage, that will be most affected by the duration we choose? When should any period commence?

154. *Program Continuance.* We invite comment on what factors we should consider in deciding whether to extend a pilot program beyond the initial permitted period to make that program permanent. What information should we focus on in evaluating the efficacy of such programs? What, if any, information should we require providers to submit regarding their pilot programs so that we can make an informed judgement on extending the pilot programs or amending our rules to allow them to continue permanently?

155. *Burden of Demonstrating Compliance with Existing Rate Caps.* Finally, we seek comment on whether to place the burden on providers of demonstrating that any pilot programs comply with our inmate calling service rate and ancillary services fee caps. Should the provider bear the burden of demonstrating it has complied with those caps? And if the provider fails to meet that burden, should the consumer be entitled to a refund of the charges over and above those that would have been assessed on a per-minute basis? What would the appropriate period be for determining whether a pilot program has complied with our rate caps, and how can this burden be met for calling plans that are not dependent upon a given period (such as a fixed fee for a number of calls)? For example, should we evaluate compliance with our rate and ancillary fee caps on a three-month basis to account for normal variations in calling patterns that on average would end up complying with our rate caps if calls had been billed on a per-minute basis over the three-month period? Should we adopt a shorter or longer period and, if so, why? What other factors should we consider regarding the burden of proof?

## **F. Digital Equity and Inclusion**

156. The Commission, as part of its continuing effort to advance digital equity for all,<sup>366</sup> including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations<sup>367</sup> and benefits (if any) that may be associated with the proposals and issues discussed in this Further Notice. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

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<sup>366</sup> Section 1 of the Act provides that the FCC “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” 47 U.S.C. § 151.

<sup>367</sup> The term “equity” is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021).



## V. PROCEDURAL MATTERS

157. *Supplemental Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>368</sup> the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) relating to this Order. The Supplemental FRFA is set forth in Appendix C.

158. *Initial Regulatory Flexibility Certification.* As required by the RFA,<sup>369</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Sixth Further Notice of Proposed Rulemaking. The IRFA is set forth in Appendix D. The Commission requests written public comments on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in the Sixth Further Notice of Proposed Rulemaking. The Commission will send a copy of the Sixth Further Notice of Proposed Rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>370</sup> In addition, the Sixth Further Notice of Proposed Rulemaking and the IRFA (or summaries thereof) will be published in the Federal Register.<sup>371</sup>

159. *Congressional Review Act.* The Commission will submit this draft Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for concurrence as to whether this rule is “major” or “non-major” under the Congressional Review Act.<sup>372</sup> The Commission will send a copy of this Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).<sup>373</sup>

160. *Paperwork Reduction Act Analysis.* The Fourth Report and Order contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).<sup>374</sup> It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA.<sup>375</sup> OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002,<sup>376</sup> we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

161. In Appendix C, we have assessed the effects of the required collection of information from inmate calling services providers about the provision of each form of TRS, TTY-to-TTY calls, and ASL direct video calls. We find that the benefits of the additional reporting requirements to increase transparency and accountability into deployment and usage of TRS by incarcerated people with communications disabilities outweigh the costs of tracking and reporting this additional information in the

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<sup>368</sup> 5 U.S.C. § 601 *et seq.*

<sup>369</sup> *Id.* § 603.

<sup>370</sup> *See* 5 U.S.C. § 603(a).

<sup>371</sup> *Id.*

<sup>372</sup> 5 U.S.C. § 804(2).

<sup>373</sup> *Id.* § 801(a)(1)(A).

<sup>374</sup> Pub. L. No. 104-13, 109 Stat 163 (1995) (codified at 44 U.S.C. §§ 3501-3520).

<sup>375</sup> 44 U.S.C. § 3507(d).

<sup>376</sup> Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501-3520 (2016).

reports filed annually by inmate calling services providers. We have also assessed the effects of revising the TRS user registration requirement for VRS and IP CTS. We find that the revisions are necessary to ensure that incarcerated people with communications disabilities are able to be registered in the TRS user registration database. These revisions will facilitate registration while ensuring providers are not attempting to collect unnecessary or unobtainable information. The benefits to ensuring incarcerated people will be able to register to use VRS or IP CTS as well as maintaining the registration safeguard to help prevent waste, fraud, and abuse to the TRS program outweigh the burdens associated with collecting slightly revised registration information from incarcerated people with communications disabilities.

162. *Initial Paperwork Reduction Act of 1995 Analysis.* The Sixth Notice of Proposed Rulemaking may contain new or modified information collection(s) subject to the PRA.<sup>377</sup> If the Commission adopts any new or modified information collection requirements, they will be submitted to the OMB for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,<sup>378</sup> we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”<sup>379</sup>

163. *Comments.* Pursuant to sections 1.415 and 1.419 of the Commission’s rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document.<sup>380</sup> Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS).<sup>381</sup>

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/filings>.
- Paper Filers:
  - Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
  - Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
  - Currently, the Commission does not accept any hand delivered or messenger delivered filings as a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. In the event that the Commission

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<sup>377</sup> Public Law 104-13.

<sup>378</sup> Public Law 107-198.

<sup>379</sup> 44 U.S.C. § 3506(c)(4).

<sup>380</sup> 47 CFR §§ 1.415, 1.419.

<sup>381</sup> See FCC, Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (May 1, 1998).

announces the lifting of COVID-19 restrictions, a filing window will be opened at the Commission's office located at 9050 Junction Drive, Annapolis Junction, MD 20701.<sup>382</sup>

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail may be addressed to 45 L Street, NE, Washington, DC 20554.
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.
- Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to use a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the Sixth Further Notice of Proposed Rulemaking in order to facilitate our internal review process.

164. *Ex Parte Rules.* The proceeding that the Sixth Further Notice of Proposed Rulemaking initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>383</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in the prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b). In proceedings governed by section 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

165. *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530.

<sup>382</sup> See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

<sup>383</sup> 47 CFR § 1.1200 *et seq.*

**VI. ORDERING CLAUSES**

166. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i)-(j), 201(b), 218, 220, 225, 255, 276, 403, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 201(b), 218, 220, 225, 255, 276, 403, and 617, this Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking ARE ADOPTED.

167. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i)-(j), 201(b), 218, 220, 225, 255, 276, 403, and 716, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 201(b), 218, 220, 225, 255, 276, 403, and 617, this Fourth Report and Order, including the amendments to sections 64.604, 64.611, 64.6000, 64.6020, 64.6040, and the addition of section 64.6130, of the Commission's rules, SHALL BE EFFECTIVE thirty (30) days after publication of a summary of this Fourth Report and Order in the Federal Register, except that the delegation of authority to the Consumer and Governmental Affairs Bureau and the Wireline Competition Bureau SHALL BE EFFECTIVE upon publication in the Federal Register. Amendments to sections 64.611(k)(1)(iv)-(v), 60.6040(c), and 64.6060(a)(5)-(7) will not become effective until the Office of Management and Budget (OMB) completes any review that the Wireline Competition Bureau and Consumer and Governmental Affairs Bureau determine is required under the Paperwork Reduction Act (PRA) and the Wireline Competition Bureau and Consumer and Governmental Affairs Bureau provide an effective date by subsequent Public Notice.

168. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i)-(j), the Petition for Reconsideration that NCIC Inmate Communications filed on August 27, 2021, in WC Docket No. 12-375 IS DISMISSED AS MOOT to the extent stated in this Fourth Report and Order.

169. IT IS FURTHER ORDERED that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on this Sixth Further Notice of Proposed Rulemaking on or before 30 days after publication of a summary of this Sixth Further Notice of Proposed Rulemaking in the Federal Register and reply comments on or before 60 days after publication of a summary of this Sixth Further Notice of Proposed Rulemaking in the Federal Register.

170. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis and the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

171. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Evaluation and Records Management, SHALL SEND a copy of this Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A****List of Commenting Parties****Comments:**

Benj Azose

California Public Utilities Commission (CPUC)

City of Philadelphia's Office of Community Empowerment and Opportunity (CEO)

ClearCaptions, LLC (ClearCaptions)

Global Tel\*Link Corporation (GTL)

Hamilton Relay, Inc. (Hamilton Relay)

HEARD; Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI); American Association of the DeafBlind (AADB); American Deafness and Rehabilitation Association (ADARA); Association of Late-Deafened Adults (ALDA); California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH); Cerebral Palsy and Deaf Organization (CPADO); Communications Service for the Deaf (CSD); Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD); Hearing Loss Association of America (HLAA); National Association of the Deaf (NAD); National Cued Speech Association (NCSA); National Disability Rights Network (NDRN); National Hispanic Latino Association of the Deaf (NHLAD); Northern Virginia Resource Center for Deaf and Hard of Hearing Persons (NVRC); Registry of Interpreters for the Deaf (RID); Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing, Gallaudet University (DHH-RERC); Rehabilitation Engineering Research Center on Universal Interface & Information Technology Access (IT-RERC) (collectively, Accessibility Coalition)

National Association of State Utility Consumer Advocates (NASUCA)

National Disability Rights Network (NDRN)

National Sheriff's Association (NSA)

NCIC Inmate Communications (NCIC)

Pay Tel Communications, Inc. (Pay Tel)

Praeses, LLC (Praeses)

Prison Policy Initiative (PPI)

Securus Technologies, LLC (Securus)

Tidal Wave Telecom, Inc. (Tidal Wave)

United Church of Christ, OC Inc., New America's Open Technology Institute, Free Press, Benton Institute for Broadband & Society, the National Consumer Law Center (on behalf of its low-income clients), and Public Knowledge (collectively, Joint Advocates)

Worth Rises

ZP Better Together, LLC (ZP)

**Reply Comments:**

Accessibility Coalition

Benj Azose

Center for Advanced Communications Policy (CACP)

ClearCaptions

ASL Services Holdings, LLC dba GlobalVRS (GlobalVRS)

GTL

Katherine Clad

Leadership Conference on Civil and Human Rights, American Civil Liberties Union, Asian Americans Advancing Justice (AAJC), Autistic Self Advocacy Network, Center for Democracy & Technology, Center for Disability Rights, Center for Law and Social Policy (CLASP), Center for Responsible Lending, Common Cause, Communications Workers of America, Defending Rights & Dissent, Disability Rights Education & Defense Fund, Disciples Center for Public Witness, Drug Policy Alliance, Electronic Frontier Foundation, Hispanic Federation, Institute for Intellectual Property & Social Justice, MediaJustice, Muslim Advocates, NAACP Legal Defense and Educational Fund, Inc. (LDF), National Consumer Law Center (on behalf of its low-income clients), National Council of Asian Pacific Americans, National Council of Churches, National Employment Law Project, National Hispanic Media Coalition, National Organization for Women Racial Justice Committee, National Urban League, New Jersey Muslim Lawyers Association, Public Citizen, Robert F. Kennedy Human Rights, Sojourners, Southern Poverty Law Center, Action Fund, Tayba Foundation, and United Church of Christ Media Justice Ministry (collectively, Leadership Conference)

NASUCA

NCIC

NSA

Pay Tel

PPI

Prisoners' Legal Services of Massachusetts, Bristol County for Correctional Justice, Greater Boston Legal Services, The Coalition for Social Justice, and Karina Wilkinson.

Securus

Talton Communications, Inc. (Talton Communications)

Worth Rises

Wright Petitioners, the Benton Institute for Broadband & Public Policy, and Public Knowledge (Wright Petitioners)

ZP

## APPENDIX B

### Final Rules

For the reasons set forth above, the Federal Communications Commission amends 47 CFR part 64 as follows:

#### **PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 620, 617, 1401-1473, unless otherwise noted; Pub. L. 115-141, Div. P, sec. 503, 132 Stat. 348, 1091.

1. Amend § 64.604 by revising paragraph (a)(3)(i) and adding paragraph (a)(3)(ix) to read as follows:

#### **§ 64.604 Mandatory Minimum Standards.**

\* \* \* \* \*

(a) \* \* \*

(3) \* \* \*

(i) Consistent with the obligations of telecommunications carrier operators, CAs are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services, except that the number and duration of calls to or from incarcerated persons may be limited in accordance with a correctional authority's generally applicable policies regarding telephone calling by incarcerated persons.

\* \* \* \* \*

(ix) This paragraph (a)(3) does not require that TRS providers serving incarcerated persons allow types of calls or calling features that are not permitted for hearing people incarcerated in the correctional facility being served.

2. Amend § 64.611 by adding paragraph (k) to read as follows:

#### **§ 64.611 Internet-based TRS registration.**

\* \* \* \* \*

(k) *Registration for use of TRS in correctional facilities.*

(1) *Individual user registration.*

(i) *Registration information and documentation.* If an individual eligible to use TRS registers with an Internet-based TRS provider while incarcerated, the provider shall collect and transmit to the TRS User Registration Database the information and documentation required by the applicable provisions of this section, except that:

(A) The residential address specified for such incarcerated person shall be the name of the correctional authority with custody of that person along with the main or administrative address of such authority;

(B) A Registered Location need not be provided; and



(C) If an incarcerated person has no social security number or Tribal Identification number, an identification number assigned by the correctional authority along with the facility identification number, if there is one, may be provided in lieu of the last four digits of a social security number or a Tribal Identification number.

(ii) *Verification of VRS and IP CTS registration data.* An incarcerated person's identity and address may be verified pursuant to § 64.615(a)(6), for purposes of VRS or IP CTS registration, based on documentation, such as a letter or statement, provided by an official of a correctional authority that states the name of the person; the person's identification number assigned by the correctional authority; the name of the correctional authority; and the address of the correctional facility. The VRS or IP CTS provider shall transmit such documentation to the TRS User Registration Database administrator.

(iii) Upon release (or transfer to a different correctional authority) of an incarcerated person who has registered for VRS or IP CTS, the VRS or IP CTS provider with which such person has registered shall update the person's registration information within 30 days after such release or transfer. Such updated information shall include, in the case of release, the individual's full residential address and (if required by this section or part 9 of these rules) Registered Location, and in the case of transfer, shall include the information required by paragraph (k)(1)(ii) of this section.

(iv) VRS providers shall not allow dial-around calls by incarcerated persons.

(2) *Enterprise User Registration for VRS.* Notwithstanding the other provisions of this section, for the purpose of providing VRS to incarcerated individuals under enterprise registration, pursuant to paragraph (a)(6) of this section, a TRS provider may assign to a correctional authority a pool of telephone numbers that may be used interchangeably with any videophone or other user device made available for the use of VRS in correctional facilities overseen by such authority. For the purpose of such enterprise registration, the address of the organization specified pursuant to paragraph (a)(6)(iii) of this section may be the main or administrative address of the correctional authority, and a Registered Location need not be provided.

3. Amend § 64.6000 by revising paragraph (m)(3) and the final sentence of paragraph (r), and adding paragraph (y) to read as follows:

### **§ 64.6000 Definitions.**

As used in this subpart:

\* \* \* \* \*

(m) \* \* \*

(3) Post-conviction and awaiting transfer to another facility. The term also includes city, county, or regional facilities that have contracted with a private company to manage day-to-day operations; privately owned and operated facilities primarily engaged in housing city, county or regional inmates; facilities used to detain individuals, operated directly by the Federal Bureau of Prisons or U.S. Immigration and Customs Enforcement, or pursuant to a contract with those agencies; juvenile detention centers; and secure mental health facilities;

\* \* \* \* \*

(r) \* \* \* The term also includes public and private facilities that provide outsource housing to other agencies such as the State Departments of Correction and the Federal Bureau of Prisons; and facilities that would otherwise fall under the definition of a Jail but in which the majority of inmates are post-conviction and are committed to confinement for sentences of longer than one year;

\* \* \* \* \*

(y) *Controlling Judicial or Administrative Mandate* means:

- (1) A final court order requiring an incarcerated person to pay restitution;
- (2) A fine imposed as part of a criminal sentence;
- (3) A fee imposed in connection with a criminal conviction; or
- (4) A final court or administrative agency order adjudicating a valid contract between the provider and the account holder, entered into prior to [[insert the release date of this Order]], that allows or requires that an Inmate Calling Services Provider act in a manner that would otherwise violate § 64.6130 of this Chapter.

Amend § 64.6020 by revising the section heading and paragraphs (b)(2) and (b)(5) to read as follows:

**§ 64.6020 Ancillary Service Charges.**

\* \* \* \* \*

(b) \* \* \*

(2) For Single-Call and Related Services - when the transaction is paid for through an automated payment system, \$3.00 per transaction, plus the effective, per-minute rate; or when the transaction is paid via a live agent, \$5.95 per transaction, plus the effective, per-minute rate;

\* \* \* \* \*

(5) For Third-Party Financial Transaction Fees - when the transaction is paid through an automated payment system, \$3.00 per transaction; or when the transaction is paid via a live agent, \$5.95 per transaction.

4. Amend § 64.6040 by revising paragraphs (a) and (b) and adding paragraphs (c) and (d) to read as follows:

**§ 64.6040 Communications Access for Incarcerated People with Communication Disabilities.**

(a) A Provider shall provide incarcerated people access to TRS and related communication services as described in this section, except where the correctional authority overseeing a facility prohibits such access.

(b)(1) A Provider shall provide access for incarcerated people with communication disabilities to Traditional (TTY-Based) TRS and STS.

(2) Beginning January 1, 2024, a Provider serving a correctional facility in any jurisdiction with an Average Daily Population of 50 or more incarcerated persons, shall:

(i) Where broadband service is available, provide access to any form of TRS (in addition to Traditional TRS and STS) that is eligible for TRS Fund support (except that a Provider need not provide access to *non-Internet Protocol* Captioned Telephone Service in any facility where it provides access to IP CTS); and

(ii) to a point-to-point video service, as defined in § 64.601(a)(32), that allows communication in American Sign Language (ASL) with other ASL users; and

(iii) where broadband service is not available, provide access to *non-Internet Protocol* Captioned Telephone Service, in addition to Traditional TRS and STS.

(c) As part of its obligation to provide access to TRS, a Provider shall:

(1) Make all necessary contractual and technical arrangements to ensure that, consistent with the security needs of a correctional facility, incarcerated individuals eligible to use TRS can access at least one certified provider of each form of TRS required by this section;

(2) Work with correctional authorities, equipment vendors, and TRS providers to ensure that screen-equipped communications devices such as tablets, smartphones, or videophones are available to incarcerated people who need to use TRS for effective communication, and all necessary TRS provider software applications are included, with any adjustments needed to meet the security needs of the institution, provide compatibility with institutional communication systems, and allow operability over the inmate calling services provider's network;

(3) Provide any assistance needed by TRS providers in collecting the registration information and documentation required by § 64.611 from incarcerated users and correctional authorities; and

(4) When an incarcerated person who has individually registered to use VRS, IP Relay, or IP CTS is released from incarceration or transferred to another correctional authority, notify the TRS provider(s) with which the incarcerated person has registered.

(d) *Charges for TRS and related communication services.*

(1) Except as provided in paragraph (d) of this section, no Provider shall levy or collect any charge or fee on or from any party to a TRS call to or from an incarcerated person, or any charge for the use of a device or transmission service when used to access TRS from a correctional facility.

(2) When providing access to IP CTS or CTS, a Provider may assess a charge for such IP CTS or CTS call that does not exceed the charge levied or collected by the Provider for a voice telephone call of the same duration, distance, jurisdiction, and time-of-day placed to or from an individual incarcerated at the same correctional facility.

(3) When providing access to a point-to-point video service, as defined in § 64.601(a)(32), for incarcerated individuals with communication disabilities who can use American Sign Language, the total charges or fees that a Provider levies on or collects from any party to such point-to-point video call, including any charge for the use of a device or transmission service, shall not exceed the charge levied or collected by the Provider for a voice telephone call of the same duration, distance, jurisdiction, and time-of-day placed to or from an individual incarcerated at the same correctional facility.

(4) No Provider shall levy or collect any charge in excess of 25 percent of the applicable per-minute rate for TTY-to-TTY calls when such calls are associated with Inmate Calling Services.

5. Amend § 64.6060 by revising paragraphs (a)(5), (6), and (7) to read as follows:

**§ 64.6060 Annual reporting and certification requirement.**

(a) \* \* \*

(5) For each facility served, the kinds of TRS that may be accessed from the facility;

(6) For each facility served, the number of calls completed and the number of dropped calls during the reporting period in each of the following categories:

(i) TTY-to-TTY calls;

(ii) Direct video calls placed or received by ASL users; and

(iii) TRS calls, broken down by each form of TRS that can be accessed from the facility; and

(7) For each facility served, the number of complaints that the reporting Provider received related to dropped calls and poor call quality, respectively, in each of the categories set forth in paragraph (a)(6) of this section.

\* \* \* \* \*

6. Add § 64.6130 to subpart FF of this part to read as follows:

**§ 64.6130 Interim Protections of Consumer Funds in Inactive Accounts.**

(a) All funds deposited into a debit calling or prepaid calling account that can be used to pay for interstate or international inmate calling services or associated ancillary services shall remain the property of the account holder unless or until the funds are either:

(1) Used to pay for products or services purchased by the account holder or the incarcerated person for whose benefit the account was established;

(2) Disposed of in accordance with a Controlling Judicial or Administrative Mandate; or

(3) Disposed of in accordance with applicable state law, including, but not limited to, laws governing unclaimed property.

(b) No provider may seize or otherwise dispose of unused funds in a debit calling or prepaid calling account until at least 180 calendar days of continuous account inactivity has passed, or at the end of any longer, alternative period set by the provider or by state law, except when funds are tendered for services rendered or refunded to the customer.

(c) The 180-day period, or longer alternative period set by the provider or by state law, must be continuous. Any of the following actions by the account holder or the incarcerated person for whose benefit the account was established ends the period of inactivity and restarts the 180-day period:

(1) Depositing, crediting, or otherwise adding funds to an account;

(2) Withdrawing, spending, debiting, transferring, or otherwise removing funds from an account; or

(3) Expressing an interest in retaining, receiving, or transferring the funds in an account, or otherwise attempting to exert or exerting ownership or control over the account or the funds held within the account.

(d) After 180 days of continuous account inactivity have passed, or at the end of any longer alternative period set by the provider or by state law, the provider must make reasonable efforts to refund the balance in the account to the account holder.

(e) If a provider's reasonable efforts to refund the balance of the account fail, the provider must dispose of remaining funds in accordance with applicable state consumer protection law concerning unclaimed funds or the disposition of such accounts, or if the state law is unclear, the Uniform Unclaimed Property Act.

## APPENDIX C

## Supplemental Final Regulatory Flexibility Analysis

**A. Need for, and Objectives of, the 2022 Fourth Report and Order**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Second Further Notice of Proposed Rulemaking in the Commission's Inmate Calling Services proceeding released in October 2014.<sup>2</sup> The Commission sought written public comment on the proposals in that *Notice*, including comment on the IRFA.<sup>3</sup> The Commission did not receive comments directed toward the IRFA. Thereafter, the Commission issued a Final Regulatory Flexibility Analysis (FRFA) conforming to the RFA.<sup>4</sup> This Supplemental FRFA supplements that FRFA to reflect the actions taken in the Fourth Report and Order (Order) and conforms to the RFA.<sup>5</sup>

2. The Order adopts rules to improve access to communications services for incarcerated people with communication disabilities. Through these rules, the Commission requires that all inmate calling services providers provide access to all relay services eligible for Telecommunications Relay Services (TRS) Fund support in any correctional facility in a jurisdiction with an average daily population of 50 or more inmates, where broadband is available, with the exception of non-IP CTS in facilities where IP CTS is offered. Non-IP CTS is required in any facility in a jurisdiction with an average daily population of 50 or more inmates, where IP CTS is not provided. The Commission also requires that where inmate calling services providers are required to provide access to all forms of TRS, they also must allow American Sign Language (ASL) direct, or point-to-point, video communication. The Order amends the Commission's rules to clarify the rule prohibiting inmate calling services providers from assessing charges for TTY-based TRS calls. The Commission further expands the requirements under this section to prohibit inmate calling service providers from charging either party to a video relay service (VRS) calls, speech-to-speech (STS) calls, and Internet Protocol Relay Service (IP Relay) calls, and adopts limits on the charges for Internet Protocol Captioned Telephone Service calls, TTY-to-TTY calls, and direct video calls conducted in ASL. The Commission also expands inmate calling services providers' annual reporting requirements to include all relay services. The Commission requires providers to list, for each facility served, the types of TRS that can be accessed from the facility and the number of completed calls, dropped calls, and complaints for TTY-to-TTY calls, ASL direct video calls, and each type of TRS for which access is provided. The Commission expands these reporting requirements regarding TRS and disability access to increase transparency and accountability into deployment and usage of TRS by incarcerated people with communications disabilities. The Commission also amends TRS user registration requirements to facilitate the use of TRS by eligible incarcerated individuals.

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-602, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Further Notice of Proposed Rulemaking, 29 FCC Rcd 13170 (2014) (*2014 ICS Notice*).

<sup>3</sup> *See id.* at 13235, Appx. at para. 2.

<sup>4</sup> *Rates for Inmate Calling Services*, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763, 12944-49 (2015) (*2015 ICS Order* or *2015 ICS Notice*).

<sup>5</sup> See 5 U.S.C. § 604.

3. The Order adopts other reforms to lessen the financial burden incarcerated people and their loved ones face when using calling services, as contemplated by the *2021 ICS Notice*. First, the Report and Order prohibits providers from seizing or otherwise disposing of funds in inactive calling services accounts until at least 180 calendar days of continuous inactivity has passed in such accounts. After the 180-day period the Report and Order requires providers to refund the account balance to the account holder or dispose of the funds in accordance with applicable state law. Second, the Report and Order lowers certain ancillary service rate caps on provider charges for individual calls when neither the incarcerated person nor the person being called has an account with the provider. The Report and Order also lowers rate caps on provider charges for processing credit card, debit card, and other payments to calling services accounts. Finally, the Report and Order amends the definitions of “Jail” and “Prison” to include institutions that the Commission has long intended to include in those definitions.

**B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

4. The Commission did not receive comments specifically addressing the rules and policies proposed in the IRFA.

**C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration**

5. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

**D. Description and Estimate of the Number of Small Entities to Which Rules Will Apply**

6. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules they adopt.<sup>6</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>7</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>8</sup> A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>9</sup>

7. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.<sup>10</sup> First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.<sup>11</sup> These types of

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<sup>6</sup> 5 U.S.C. § 604(a)(3).

<sup>7</sup> 5 U.S.C. § 601(6).

<sup>8</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>9</sup> 15 U.S.C. § 632.

<sup>10</sup> See 5 U.S.C. § 601(3)-(6).

<sup>11</sup> See SBA, Office of Advocacy, Frequently Asked Questions, “What is a small business?,” <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/11/03093005/Small-Business-FAQ-2021.pdf> (Nov 2021).

small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.<sup>12</sup>

8. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>13</sup> The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.<sup>14</sup> Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.<sup>15</sup>

9. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>16</sup> U.S. Census Bureau data from the 2017 Census of Governments<sup>17</sup> indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.<sup>18</sup> Of this number, there were 36,931 general purpose governments (county,<sup>19</sup> municipal, and town or township<sup>20</sup>) with populations of

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<sup>12</sup> *Id.*

<sup>13</sup> See 5 U.S.C. § 601(4).

<sup>14</sup> The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data do not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

<sup>15</sup> See Exempt Organizations Business Master File Extract (EOBMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EOBMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description were extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to \$50,000, for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) which includes the continental U.S., Alaska, and Hawaii. These data do not include information for Puerto Rico.

<sup>16</sup> See 5 U.S.C. § 601(5).

<sup>17</sup> See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7.” See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

<sup>18</sup> See U.S. Census Bureau, 2017 Census of Governments—Organization Table 2, Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, or municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG1700ORG02 Table Notes \_Local Governments by Type and State\_ 2017.

<sup>19</sup> See *id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

<sup>20</sup> See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

less than 50,000 and 12,040 special purpose governments—independent school districts<sup>21</sup> with enrollment populations of less than 50,000.<sup>22</sup> Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”<sup>23</sup>

10. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.<sup>24</sup> Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including voice over Internet Protocol (VoIP) services, wired (cable) audio and video programming distribution, and wired broadband internet services.<sup>25</sup> By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.<sup>26</sup> Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.<sup>27</sup>

11. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>28</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.<sup>29</sup> Of this number, 2,964 firms operated

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<sup>21</sup> See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes\_Special Purpose Local Governments by State\_Census Years 1942 to 2017.

<sup>22</sup> While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data do not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts are included in the special purpose governments category.

<sup>23</sup> This total is derived from the sum of the number of general purpose governments (county, or municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments—independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments—Organizations tbls.5, 6 & 10.

<sup>24</sup> See U.S. Census Bureau, 2017 NAICS Definition, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Fixed Local Service Providers include the following types of providers: incumbent LECs, Competitive Access Providers (CAPs) and competitive LECs, Cable/Coax competitive LECs, Interconnected VoIP Providers, Non-Interconnected VoIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers are not included in this industry.

<sup>28</sup> See 13 CFR § 121.201, NAICS Code 517311.

<sup>29</sup> See U.S. Census Bureau, 2017 *Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?v=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.



with fewer than 250 employees.<sup>30</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services.<sup>31</sup> Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees.<sup>32</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

12. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange services providers. Wired Telecommunications Carriers<sup>33</sup> is the closest industry with a SBA small business size standard.<sup>34</sup> Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.<sup>35</sup> The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>36</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.<sup>37</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>38</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were fixed local exchange service providers.<sup>39</sup> Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees.<sup>40</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

13. *Incumbent Local Exchange Carriers (Incumbent LECs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers<sup>41</sup> is the closest industry with a SBA small business size standard.<sup>42</sup>

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<sup>30</sup> *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>31</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf3>.

<sup>32</sup> *Id.*

<sup>33</sup> See U.S. Census Bureau, 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>34</sup> See 13 CFR § 121.201, NAICS Code 517311.

<sup>35</sup> Fixed Local Exchange Service Providers include the following types of providers: incumbent LECs, CAPs, and competitive LECs, Cable/Coax competitive LECs, Interconnected VoIP Providers, Non-Interconnected VoIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

<sup>36</sup> *Id.*

<sup>37</sup> See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

<sup>38</sup> *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>39</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

<sup>40</sup> *Id.*

<sup>41</sup> See U.S. Census Bureau, 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>43</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.<sup>44</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>45</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 1,227 providers that reported they were incumbent local exchange service providers.<sup>46</sup> Of these providers, the Commission estimates that 929 providers have 1,500 or fewer employees.<sup>47</sup> Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

14. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.<sup>48</sup> Wired Telecommunications Carriers<sup>49</sup> is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>50</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.<sup>51</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>52</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers.<sup>53</sup> Of these providers, the Commission estimates that 3,808 providers have

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<sup>42</sup> See 13 CFR § 121.201, NAICS Code 517311.

<sup>43</sup> *Id.*

<sup>44</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?v=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevie w=false>.

<sup>45</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>46</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

<sup>47</sup> *Id.*

<sup>48</sup> Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

<sup>49</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>50</sup> See 13 CFR § 121.201, NAICS Code 517311.

<sup>51</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?v=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevie w=false>.

<sup>52</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>53</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

1,500 or fewer employees.<sup>54</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

15. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers<sup>55</sup> is the closest industry with a SBA small business size standard.<sup>56</sup> The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>57</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.<sup>58</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>59</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 151 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 131 providers have 1,500 or fewer employees.<sup>60</sup> Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities

16. *Local Resellers*. Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard.<sup>61</sup> The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households.<sup>62</sup> Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.<sup>63</sup> Mobile virtual network operators (MVNOs) are included in this industry.<sup>64</sup> The SBA small business size standard for Telecommunications Resellers classify a business as small if it has 1,500 or fewer employees.<sup>65</sup> U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.<sup>66</sup> Of that number, 1,375 firms

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<sup>54</sup> *Id.*

<sup>55</sup> See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>56</sup> See 13 CFR § 121.201, NAICS Code 517311.

<sup>57</sup> *Id.*

<sup>58</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?v=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

<sup>59</sup> *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>60</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021) <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

<sup>61</sup> See U.S. Census Bureau, *2017 NAICS Definition*, "517911 Telecommunications Resellers," <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> See 13 CFR § 121.201, NAICS Code 517911.

operated with fewer than 250 employees.<sup>67</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 293 providers that reported they were engaged in the provision of local resale services.<sup>68</sup> Of these providers, the Commission estimates that 289 providers have 1,500 or fewer employees.<sup>69</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers<sup>70</sup> is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.<sup>71</sup> Mobile virtual network operators (MVNOs) are included in this industry.<sup>72</sup> The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.<sup>73</sup> U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.<sup>74</sup> Of that number, 1,375 firms operated with fewer than 250 employees.<sup>75</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 518 providers that reported they were engaged in the provision of toll services.<sup>76</sup> Of these providers, the Commission estimates that 495 providers have 1,500 or fewer employees.<sup>77</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

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<sup>66</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI RM, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI RM&hidePreview=false>.

<sup>67</sup> *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>68</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

<sup>69</sup> *Id.*

<sup>70</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517911 Telecommunications Resellers,” <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> See 13 CFR § 121.201, NAICS Code 517911.

<sup>74</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI RM, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI RM&hidePreview=false>.

<sup>75</sup> *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>76</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

<sup>77</sup> *Id.*

18. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers<sup>78</sup> is the closest industry with a SBA small business size standard.<sup>79</sup> The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>80</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.<sup>81</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>82</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 115 providers that reported they were engaged in the provision of other toll services.<sup>83</sup> Of these providers, the Commission estimates that 113 providers have 1,500 or fewer employees.<sup>84</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

19. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA have developed a small business size standard specifically for payphone service providers, a group that include inmate calling services providers. Telecommunications Resellers<sup>85</sup> is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.<sup>86</sup> Mobile virtual network operators (MVNOs) are included in this industry.<sup>87</sup> The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.<sup>88</sup> U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.<sup>89</sup> Of that number, 1,375 firms operated

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<sup>78</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>79</sup> See 13 CFR § 121.201, NAICS Code 517311.

<sup>80</sup> *Id.*

<sup>81</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevious=false>.

<sup>82</sup> *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>83</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

<sup>84</sup> *Id.*

<sup>85</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> See 13 CFR § 121.201, NAICS Code 517911.

<sup>89</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevious=false>.



with fewer than 250 employees.<sup>90</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 58 providers that reported they were engaged in the provision of payphone services.<sup>91</sup> Of these providers, the Commission estimates that 57 providers have 1,500 or fewer employees.<sup>92</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

20. *TRS Providers.* TRS can be included within the broad economic category of All Other Telecommunications. According to Commission data, eleven providers currently receive compensation from the TRS Fund for providing at least one form of TRS, and currently there are six entities seeking certification to provide at least one form of TRS.<sup>93</sup>

21. *All Other Telecommunications.* The "All Other Telecommunications" category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.<sup>94</sup> This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.<sup>95</sup> Providers of Internet services (e.g., dial-up ISPs) or VoIP, via client-supplied telecommunications connections are also included in this industry.<sup>96</sup> The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.<sup>97</sup> U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.<sup>98</sup> Of those firms, 1,039 had revenue of less than \$25 million.<sup>99</sup> Based on these data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

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<sup>90</sup> *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>91</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

<sup>92</sup> *Id.*

<sup>93</sup> See FCC, *Internet-Based TRS Providers*, <https://www.fcc.gov/general/internet-based-trs-providers> (last visited Sept. 7, 2022).

<sup>94</sup> See U.S. Census Bureau, *2017 NAICS Definition*, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> See 13 CFR § 121.201, NAICS Code 517919.

<sup>98</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePrevious=false>.

<sup>99</sup> *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

**E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

22. The Order requires inmate calling services providers to provide incarcerated, TRS-eligible users the ability to access any relay service eligible for TRS Fund support, subject to some limitations. Providers must take all steps necessary to ensure that access to an appropriate relay service is made available promptly to each inmate who has a disability, and they must offer access to all forms of TRS (i.e., in any facility in a jurisdiction with an average daily population of 50 or more, located where broadband service is available), except for non-IP CTS where IP CTS is made available, and must also make available direct, point-to-point video communication services provided by VRS providers. Non-IP CTS is required to be offered in facilities where IP CTS is not provided.

23. As a part of the Commission's Annual Reporting and Certification Requirements, inmate calling services providers are required to submit certain information related to accessibility, including all relay services. Providers must list, for each facility served, the types of TRS that can be accessed from the facility and the number of completed calls, dropped calls, and complaints for TTY-to-TTY calls, ASL direct video calls, and each type of TRS for which access is provided. To facilitate TRS registration of eligible, incarcerated individuals, the Commission revises the data that TRS providers collect, including the eligible individuals' address, Registered Location, and unique user identifier. The Commission also allows enterprise registration for incarcerated VRS users.

24. The Order prevents inmate calling services providers from seizing or otherwise disposing of funds deposited in a debit calling or prepaid calling account until at least 180 calendar days of continuous account inactivity has passed, except when funds are tendered for services rendered, disposed of in accordance with a controlling judicial or administrative mandate, or refunded to the customer. This rule is adopted on an interim basis, pending the Commission's analysis of additional information. The Order also refines the interim rate caps for certain ancillary service charges. Specifically, it lowers the maximum ancillary services fees for single-call services and third-party financial transactions to \$3.00 for single-call services and third-party financial transactions that involve automated payments, and to \$5.95 for payments facilitated by a live agent. Finally, the Commission amends its definitions of "Jail" and "Prison" to include U.S. Immigration and Customs Enforcement, Federal Bureau of Prison, juvenile detention, and secure mental health facilities to conform those definitions to its intent, when it adopted those definitions in 2015, that they include every type of facility where individuals can be incarcerated or detained.

**F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

25. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."<sup>100</sup>

26. To address concerns raised by an inmate calling services provider that serves small rural jails, the Commission limits the scope of a provider's obligation to provide access to additional forms of TRS, pending further consideration of the costs, benefits, and alternatives to such obligations. The Commission, through the Order, does not require inmate calling services providers to offer such access in

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<sup>100</sup> 5 U.S.C. § 603(c)(1)-(4).

jurisdictions with an average daily population of fewer than 50 incarcerated individuals. The new rules requiring providers to provide access to ASL direct video communication, in addition to VRS, will not impose a significant cost or other burden on inmate calling services providers, as VRS providers already have the capability to comply with this requirement.

27. In the Order, the Commission adopts an interim rule on the treatment of balances in inmate calling services accounts under which an account is considered “inactive” only after 180 days of continuous inactivity. This period is similar to the time frames several inmate calling service providers currently appear to follow, suggesting that implementation of this time frame is unlikely to cause inmate calling services providers, including those that may be small entities, undue burdens. The Commission’s action lowering the maximum ancillary services fees providers may charge for single-call services and third-party financial transactions reflects a record that contains no suggestion that the lower fees will prevent inmate calling services providers, including those that may be small entities, from recovering their costs of providing those services. Finally, amendments to the definitions of “Jail” and “Prison” in the Commission rules will ensure that all correctional and confinement facilities will be properly classified under the those rules. The prior definitions were unclear regarding the classification of certain facilities under contract with the U.S. Immigration and Customs Enforcement and the Federal Bureau of Prisons, certain juvenile detention facilities, and certain secure mental health facilities, and the revised rules make clear the classification of all correctional facilities, including those that may be small entities.

#### **G. Report to Congress**

28. The Commission will send a copy of the Order, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.<sup>101</sup> In addition, the Commission will send a copy of the Order, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order, and Supplemental FRFA (or summaries thereof) will also be published in the Federal Register.<sup>102</sup>

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<sup>101</sup> 5 U.S.C. § 801(a)(1)(A).

<sup>102</sup> *See id.* § 604(b).



## APPENDIX D

### Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Sixth Further Notice of Proposed Rulemaking (Notice). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of this Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the Notice and the IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

#### A. Need for, and Objectives of, the Proposed Rules

2. In the Notice, the Commission seeks additional comment on whether to allow a simplified form of registration for using Internet Protocol Captioned Telephone Service (IP CTS) in correctional facilities, similar to enterprise phone registration currently allowed for video relay service (VRS). The Commission seeks comment on whether the Commission should require inmate calling services providers to provide access to additional forms of Telecommunications Relay Services (TRS) in jurisdictions with average daily populations of fewer than 50 incarcerated people.

3. The Notice also seeks additional evidence and comment from stakeholders to enable further reforms concerning providers' rates, charges, and practices. First, the Notice seeks comment on refining the rules adopted in the Report and Order concerning the treatment of balances in inactive accounts. Second, the Notice seeks comment on expanding the breadth and scope of existing consumer disclosure requirements. Third, the Notice addresses certain issues that arose from the providers' 2022 data collection responses. Specifically, the Notice seeks comment on how data collected by the Commission should be used to establish just and reasonable permanent caps on interstate and international rates and associated ancillary service charges consistent with the statute. Finally, the Notice seeks comment on whether to allow inmate calling services providers to offer pilot programs allowing consumers to purchase calling services under alternative pricing structures.

#### B. Legal Basis

4. The legal basis for any action that may be taken pursuant to the Notice is contained in sections 1, 2, 4(i)-(j), 201(b), 218, 220, 225, 255, 276, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 201(b), 218, 220, 225, 255, 276, and 403.

#### C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rule revisions, if adopted. The RFA

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> *Id.*

generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>4</sup> In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.<sup>5</sup> A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>6</sup>

6. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.<sup>7</sup> First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.<sup>8</sup> These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.<sup>9</sup>

7. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>10</sup> The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.<sup>11</sup> Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.<sup>12</sup>

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<sup>4</sup> See 5 U.S.C. § 601(6).

<sup>5</sup> See 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>6</sup> See 15 U.S.C. § 632.

<sup>7</sup> See 5 U.S.C. § 601(3)-(6).

<sup>8</sup> See SBA, Office of Advocacy, Frequently Asked Questions, “What is a small business?,” <https://cdnadvocacy.sba.gov/wp-content/uploads/2021/11/03093005/Small-Business-FAQ-2021.pdf>. (Nov 2021).

<sup>9</sup> *Id.*

<sup>10</sup> See 5 U.S.C. § 601(4).

<sup>11</sup> The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C. § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data do not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

<sup>12</sup> See Exempt Organizations Business Master File Extract (EO BMF), CSV Files by Region, <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description were extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to \$50,000, for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast (continued....)

8. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>13</sup> U.S. Census Bureau data from the 2017 Census of Governments<sup>14</sup> indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.<sup>15</sup> Of this number there were 36,931 general purpose governments (county<sup>16</sup> or municipal and town or township<sup>17</sup>) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts<sup>18</sup> with enrollment populations of less than 50,000.<sup>19</sup> Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”<sup>20</sup>

9. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using

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Areas (213,840) which includes the continental U.S., Alaska, and Hawaii. These data do not include information for Puerto Rico.

<sup>13</sup> See 5 U.S.C. § 601(5).

<sup>14</sup> See 13 U.S.C. § 161. The Census of Governments survey is conducted every five(5) years compiling data for years ending with “2” and “7.” See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

<sup>15</sup> See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, or municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG1700ORG02 Table Notes\_Local Governments by Type and State\_2017.

<sup>16</sup> See *id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

<sup>17</sup> See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

<sup>18</sup> See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes\_Special Purpose Local Governments by State\_Census Years 1942 to 2017.

<sup>19</sup> While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data do not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts are included in the special purpose governments category.

<sup>20</sup> This total is derived from the sum of the number of general purpose governments (county, or municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments—independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls.5, 6 & 10.

wired communications networks.<sup>21</sup> Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including voice over Internet protocol (VoIP) services, wired (cable) audio and video programming distribution, and wired broadband internet services.<sup>22</sup> By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.<sup>23</sup> Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.<sup>24</sup>

10. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>25</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.<sup>26</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>27</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services.<sup>28</sup> Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees.<sup>29</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

11. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers<sup>30</sup> is the closest industry with a SBA small business size standard.<sup>31</sup> Wired

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<sup>21</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Fixed Local Service Providers include the following types of providers: incumbent LECs, Competitive Access Providers (CAPs) and competitive LECs, Cable/Coax competitive LECs, Interconnected VoIP Providers, Non-Interconnected VoIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers are not included in this industry.

<sup>25</sup> See 13 CFR § 121.201, NAICS Code 517311.

<sup>26</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI RM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI RM&hidePreview=false>.

<sup>27</sup> *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>28</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

<sup>29</sup> *Id.*

<sup>30</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>31</sup> See 13 CFR § 121.201, NAICS Code 517311.

Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.<sup>32</sup> The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>33</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.<sup>34</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>35</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were fixed local exchange service providers.<sup>36</sup> Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees.<sup>37</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

12. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers<sup>38</sup> is the closest industry with a SBA small business size standard.<sup>39</sup> The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>40</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.<sup>41</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>42</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 1,227 providers that reported they were incumbent local exchange service providers.<sup>43</sup> Of these providers, the Commission estimates that 929 providers have

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<sup>32</sup> Fixed Local Exchange Service Providers include the following types of providers: incumbent LECs, CAPs, and competitive LECs, Cable/Coax competitive LECs, Interconnected VoIP Providers, Non-Interconnected VoIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

<sup>33</sup> *Id.*

<sup>34</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?v=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

<sup>35</sup> *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>36</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

<sup>37</sup> *Id.*

<sup>38</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>39</sup> See 13 CFR § 121.201, NAICS Code 517311.

<sup>40</sup> *Id.*

<sup>41</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?v=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

<sup>42</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

1,500 or fewer employees.<sup>44</sup> Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

13. *Competitive Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.<sup>45</sup> Wired Telecommunications Carriers<sup>46</sup> is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>47</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.<sup>48</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>49</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers.<sup>50</sup> Of these providers, the Commission estimates that 3,808 providers have 1,500 or fewer employees.<sup>51</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

14. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers<sup>52</sup> is the closest industry with a SBA small business size standard.<sup>53</sup> The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as

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<sup>43</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

<sup>44</sup> *Id.*

<sup>45</sup> Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

<sup>46</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>47</sup> See 13 CFR § 121.201, NAICS Code 517311.

<sup>48</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevie w=false>.

<sup>49</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>50</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

<sup>51</sup> *Id.*

<sup>52</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>53</sup> See 13 CFR § 121.201, NAICS Code 517311.



small.<sup>54</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.<sup>55</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>56</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 151 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 131 providers have 1,500 or fewer employees.<sup>57</sup> Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

15. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard.<sup>58</sup> The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households.<sup>59</sup> Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.<sup>60</sup> Mobile virtual network operators (MVNOs) are included in this industry.<sup>61</sup> The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.<sup>62</sup> U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.<sup>63</sup> Of that number, 1,375 firms operated with fewer than 250 employees.<sup>64</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 293 providers that reported they were engaged in the provision of local resale services.<sup>65</sup> Of these providers, the Commission

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<sup>54</sup> *Id.*

<sup>55</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

<sup>56</sup> *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>57</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

<sup>58</sup> See U.S. Census Bureau, *2017 NAICS Definition*, "517911 Telecommunications Resellers," <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> See 13 CFR § 121.201, NAICS Code 517911.

<sup>63</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

<sup>64</sup> *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>65</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

estimates that 289 providers have 1,500 or fewer employees.<sup>66</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

16. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers<sup>67</sup> is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.<sup>68</sup> MVNOs are included in this industry.<sup>69</sup> The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.<sup>70</sup> U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.<sup>71</sup> Of that number, 1,375 firms operated with fewer than 250 employees.<sup>72</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 518 providers that reported they were engaged in the provision of toll services.<sup>73</sup> Of these providers, the Commission estimates that 495 providers have 1,500 or fewer employees.<sup>74</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers<sup>75</sup> is the closest industry with a SBA small business size standard.<sup>76</sup> The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>77</sup> U.S. Census

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<sup>66</sup> *Id.*

<sup>67</sup> See U.S. Census Bureau, *2017 NAICS Definition*, "517911 Telecommunications Resellers," <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> See 13 CFR § 121.201, NAICS Code 517911.

<sup>71</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

<sup>72</sup> *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>73</sup> Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report at 26*, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

<sup>74</sup> *Id.*

<sup>75</sup> See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>76</sup> See 13 CFR § 121.201, NAICS Code 517311.

<sup>77</sup> *Id.*



Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.<sup>78</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>79</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 115 providers that reported they were engaged in the provision of other toll services.<sup>80</sup> Of these providers, the Commission estimates that 113 providers have 1,500 or fewer employees.<sup>81</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

18. *Payphone Service Providers (PSPs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for payphone service providers, a group that includes inmate calling services providers. Telecommunications Resellers<sup>82</sup> is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.<sup>83</sup> MVNOs are included in this industry.<sup>84</sup> The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.<sup>85</sup> U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.<sup>86</sup> Of that number, 1,375 firms operated with fewer than 250 employees.<sup>87</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 58 providers that reported they were engaged in the provision of payphone services.<sup>88</sup> Of these providers, the Commission estimates that 57 providers have 1,500 or fewer

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<sup>78</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>79</sup> *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>80</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

<sup>81</sup> *Id.*

<sup>82</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517911 Telecommunications Resellers,” <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> See 13 CFR § 121.201, NAICS Code 517911.

<sup>86</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>87</sup> *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>88</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

employees.<sup>89</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

19. *TRS Providers.* TRS can be included within the broad economic category of All Other Telecommunications. According to Commission data, eleven providers currently receive compensation from the TRS Fund for providing at least one form of TRS and currently there are six entities seeking certification to provide at least one form of TRS.<sup>90</sup>

20. *All Other Telecommunications.* The "All Other Telecommunications" category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.<sup>91</sup> This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.<sup>92</sup> Providers of Internet services (e.g., dial-up ISPs) or VoIP, via client-supplied telecommunications connections are also included in this industry.<sup>93</sup> The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.<sup>94</sup> U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.<sup>95</sup> Of those firms, 1,039 had revenue of less than \$25 million.<sup>96</sup> Based on these data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

21. *Compliance with Requirements to Provide Access and Expanded Registration Requirements.* In the Notice, the Commission seeks comment on whether to allow enterprise registration for IP CTS use, limited to the correctional context. If adopted, IP CTS providers would have an alternative registration method for incarcerated people with communications disabilities to access TRS. The Commission also seeks further comment on whether to modify the scope of inmate calling services providers' TRS obligations as determined in the accompanying Report and Order. In particular, the

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<sup>89</sup> *Id.*

<sup>90</sup> See FCC, *Internet-Based TRS Providers*, <https://www.fcc.gov/general/internet-based-trs-providers> (last visited Sept. 7, 2022).

<sup>91</sup> See U.S. Census Bureau, *2017 NAICS Definition*, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> See 13 CFR § 121.201, NAICS Code 517919.

<sup>95</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePrevious=false>.

<sup>96</sup> *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

Commission seeks comment on requiring those providers to provide access to additional forms of TRS (VRS, IP Relay, IP CTS, and CTS) when they serve facilities in a jurisdiction with average daily populations of fewer than 50 inmates. If adopted, inmate calling services providers that do not all already provide these additional forms of TRS to smaller facilities may have additional data to report as a part of the Commission's Annual Reporting and Certification Requirement to comply with requirements adopted in the accompanying Fourth Report and Order (Order).

22. *Other Potential Requirements.* In the Notice, the Commission seeks comment on refining the rules adopted in the Order concerning the treatment of unused funds in accounts consumers use to pay for interstate and international inmate calling services and related ancillary services charges, as well as on amendments to those rules which aim at protecting inmate calling services account holders against unreasonable practices in related to those funds. The Commission also seeks comment on the appropriate permanent interstate and international rate and ancillary services fee caps given providers' responses to the Third Mandatory Data Collection, as well as on other amendments to its ancillary services rules.

23. The Commission seeks comment on how amending its current consumer disclosure rules could improve and expand the current rules and reach more inmate calling services consumers. The potential changes include mandating that all inmate calling services providers to make the same required disclosures of information available to all consumers, regardless of whether they receive an actual bill from a provider. The Commission invites comment on whether to allow inmate calling services providers to supplement traditional per-minute pricing and develop optional pilot programs that offer consumers the ability to purchase inmate calling services under alternative pricing structures. The Commission invites comment on whether it should authorize such programs subject to certain specified conditions, including conditions protecting against unreasonably high charges for interstate and international calling services.

**E. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered**

24. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities. The Commission will consider all of these factors when it receives substantive comment from the public and potentially affected small entities. In particular, the Commission will consider the economic impact on small entities, as identified in comments filed in response to the Notice and this IRFA, in reaching its final conclusions and promulgating rules in this proceeding.

25. The Commission seeks comment on allowing enterprise registration for IP CTS so that incarcerated people with a communications disability can access TRS. If adopted, this alternative form of registration could reduce the burden on IP CTS providers by allowing providers to register the relay service at a facility that maintains a list of users. The Commission also seeks further comment on requiring inmate calling services providers to provide access to all forms of TRS in a jurisdiction with an average daily population of fewer than 50 incarcerated people. The request for comment includes asking for cost data to assist the Commission with its analysis of the issue. The cost data will help the Commission ensure it is achieving its statutory obligation of ensuring TRS are available to extent possible, while appropriately considering the burden on affected entities.

26. The comments that stakeholders submit in response to the Commission's requests for comment on the treatment of refining its rules on the treatment of funds in "inactive" inmate calling services accounts, the appropriate permanent interstate and international rate and ancillary services fee caps, and other potential amendments to its ancillary services rules, will supplement comments previously

filed in this proceeding. Collectively, these comments will help the Commission meet its statutory obligation to ensure that providers' rates, terms, and practices for interstate and international inmate calling services are reasonable. Small entities can provide input in these areas addressing whether, among other considerations, the Commission should adjust its rules to address any particular financial or implementation challenges faced by small entities.

27. Similarly, the Commission's requests for comment regarding possible amendments to its consumer disclosure rules and regarding potential pilot programs for inmate calling services that use pricing structures other than per-minute rates will provide an opportunity for small entities, as well as other stakeholders, to voice any concerns they may have. The Commission will consider any comments small entities file regarding these initiatives as part of its efforts to ensure that consumers of calling services for incarcerated people have the information they need to make informed purchasing decisions. In particular, it will consider whether any concerns small entities raise regarding possible changes to the consumer disclosure rules and the potential pilot programs as part of its overall evaluation of these areas.

28. The Commission will consider the economic impact on small entities, as identified in comments filed in response to the Notice and this IRFA, in reaching its final conclusions and promulgating rules in this proceeding.

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

29. None.